

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

On December 7, 2007, Petitioner Adventist Healthcare, Inc.(hereinafter, referred to as “Washington Adventist Hospital,” “WAH” or “the Hospital”) filed a petition for a special exception to permit the relocation of Washington Adventist Hospital to a new site, at West Farm Technology Park, 12030-12110 Plum Orchard Drive in Silver Spring., Maryland. The Hospital is currently located in Takoma Park. The property consists of 48.86 acres of land identified as Parcels BB, CC, RR, SS, and MMM, and is located west of Cherry Hill Road in the I-3 (Technology and Business Park) Zone and I-1 (Light Industrial) Zone. Petitioner also requests a waiver of the requirement of Zoning Ordinance §59-E-1.3(a) that a parking facility be located within a 500-foot walking distance of the establishment served, so that the North Parking Garage may be located at a walking distance of up to 560 feet from the Main Building of the Hospital.

On December 24, 2007, a notice was issued for a public hearing to be held on May 5, 9 and 12, 2008 (Ex. 25(b)). Petitioner moved to amend the petition on March 21 and April 11, 2008 (Ex. 65 and 101). Those motions were duly noticed (Exhibits 70 and 103), and approved without opposition.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) issued its Report on April 14, 2008 (Exhibit 102), recommending approval, with conditions, and recommending approval of the requested parking facility waiver.¹ On April 24, 2008, the Montgomery County Planning Board voted unanimously to recommend approval of the special exception and the parking facility waiver, with conditions slightly different from those recommended by Technical Staff, as stated in the April 25, 2008 letter of its chairman (Exhibit 124). The Planning Board also approved an extension of the previous findings that the site meets the Adequate Public

¹ The Technical Staff report is frequently quoted and paraphrased herein.

Facilities standards (Exhibit 162(a))² and approved the Preliminary Forest Conservation Plan for the site, with conditions (Exhibit 169).

Letters of support were filed by the Calverton Citizens Association (Exhibit 66), the Greater Colesville Citizens Association (Exhibit 87), the West Farm Homeowners Association (Exhibit 114), the Tamarack Triangle Civic Association (Exhibit 116), the Riderwood Village Resident Advisory Council (Exhibit 118), the Greater Silver Spring Chamber of Commerce (Exhibit 50(b)), the U.S. Food and Drug Administration (Exhibit 104), the Southern Asian Seventh Day Adventist Church (Exhibit 67), the Washington Spanish Seventh Day Adventist Church (Exhibit 99), the Peoples' Community Baptist Church (Exhibit 97), the Peoples' Community Wellness Center (Exhibit 96), the Labquest Partnership (Exhibit 98) and literally hundreds of area residents. The only opposition was a January 8, 2008 letter from Jerry and Alice Wahl of 1518 Featherwood Street, Silver Spring, expressing concern about potential noise from sirens and helicopters; traffic congestion; and traffic danger in conjunction with the nearby school bus depot. Exhibit 26.

A public hearing was convened as scheduled on May 5, 2008, and testimony was presented by Petitioner in support of the petition. Martin Klauber, People's Counsel for Montgomery County, participated in the hearing and expressed his support for the petition. There was no opposition testimony, and the hearing was completed on May 5. The record was held open until June 11, 2008, for additional filings by Petitioner and the Department of Public Works and Transportation (DPWT), and responses thereto. Additional filings were made by the Petitioner (Exhibits 161, 162 and 166); by Technical Staff (Exhibits 164 and 165); and by DPWT (Exhibit 167), which announced its support for the project, itemized some disagreements with Planning Board recommendations and suggested additional conditions regarding public facilities. No response was made by Technical Staff or any

² Preliminary Plan No. 19820680 for Parcels BB and CC; Preliminary Plan No. 119910390 for Parcels RR and SS; and Preliminary Plan No. 119910380 for Parcel MMM.

party to the DPWT letter, and the record closed, as scheduled, on June 11, 2008.

The record was reopened by the Hearing Examiner on July 2, 2008, in order to obtain a unified statement from M-NCPPC and the Department of Transportation (DOT, formerly DPWT) as to the conditions recommended to insure adequacy of public facilities (APF). Ex. 168. Another order from the Hearing Examiner on July 15, 2008 (Ex. 170) asked Technical Staff to address the impact of Policy Area Mobility Review (PAMR) on this case. A third order, issued on July 29, 2008, directed the Petitioner to supplement the record regarding the requirements of Zoning Ordinance §59-2.31(7). Ex. 171. Technical Staff's response regarding PAMR was filed on July 31, 2008 (Ex. 172), and Petitioner supplemented the record regarding Zoning Ordinance §59-2.31(7) on August 1, 2008. The unified APF recommendation of Technical Staff and DOT was filed on August 5, 2008 (Exhibit 176). The record closed again on August 15, 2008, after a 10 day comment period. Ex. 177.

The file in this case is quite voluminous because many complex plans are required to describe a project of this size; however, the land use issues before the Board of Appeals are straightforward. As will appear more fully below, the Hearing Examiner finds that the proposed use is appropriate for the site, and meets the criteria of the Zoning Ordinance. It should therefore be approved.

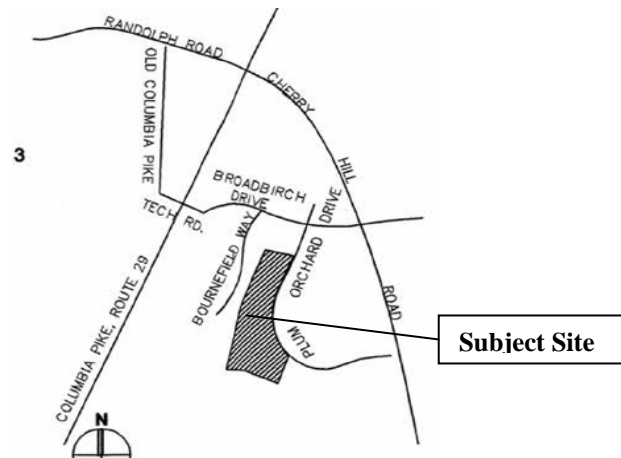
II. FACTUAL BACKGROUND

A. Subject Property

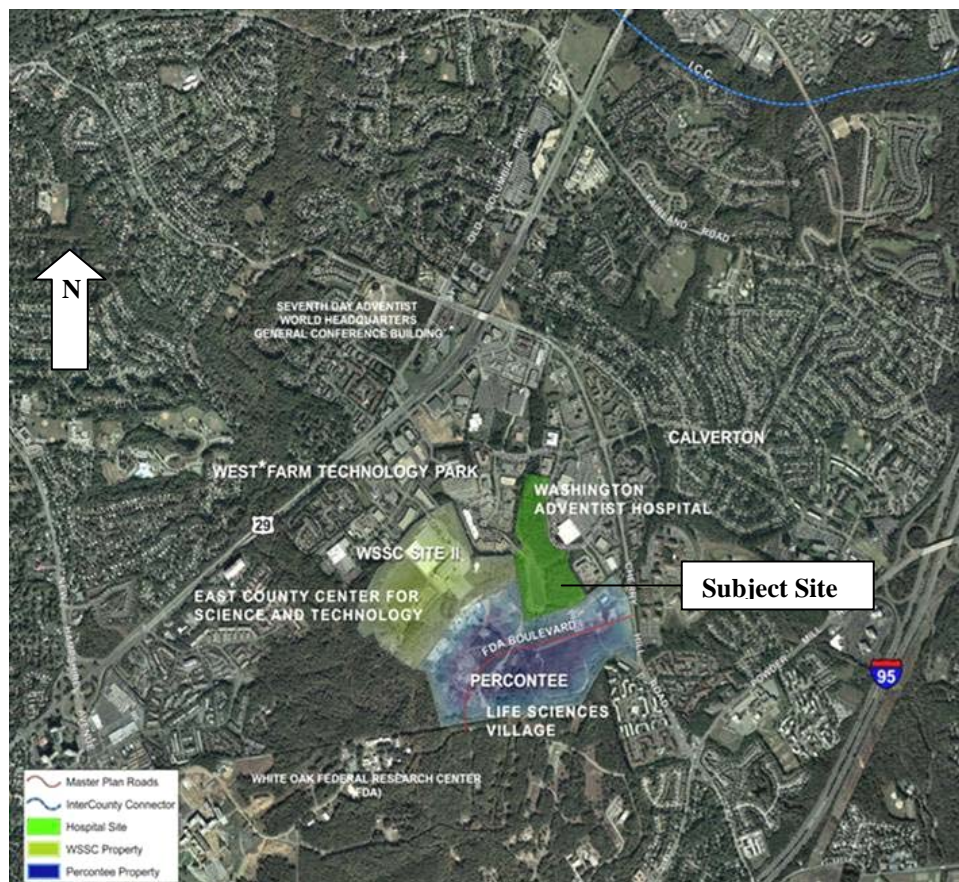
The subject property consists of 48.86 acres of unimproved land located on the west side of Plum Orchard Drive, approximately 1200 feet west of its Intersection with Cherry Hill Road and 400 feet south of its intersection with Broadbirch Drive. It is identified on the plat records as Parcels BB, CC, RR, SS and MMM, on Tax Map KQ342, Silver Spring, Maryland.

Technical Staff reports that the five parcels are subdivided lots and are part of the West*Farm Technology Park subdivision. All of the property is zoned I-3, except for a Parcel MMM, which is

zoned I-1. That parcel occupies a small area at the southwest corner of the site (including the western half of the lake) on which no buildings will be located. The property is also within the US 29/Cherry Hill Road Employment Overlay Zone. The site location is easily seen on the following site locator map from the revised Composite Special Exception Site Plan (Exhibit 161(e)):



The site can be seen in the context of the broad surrounding area in which it is located, including its proximity to I-95 and the proposed ICC, in an annotated aerial photograph (Exhibit 126):



The site's relationship to its immediate surroundings is shown on the following site context map (Exhibit 129), which is also an annotated aerial photograph:



Technical Staff reports that the property is undeveloped and contains various topographical features, including slopes, wetlands, a flood plain environmental buffer area, 31 acres of forest and a

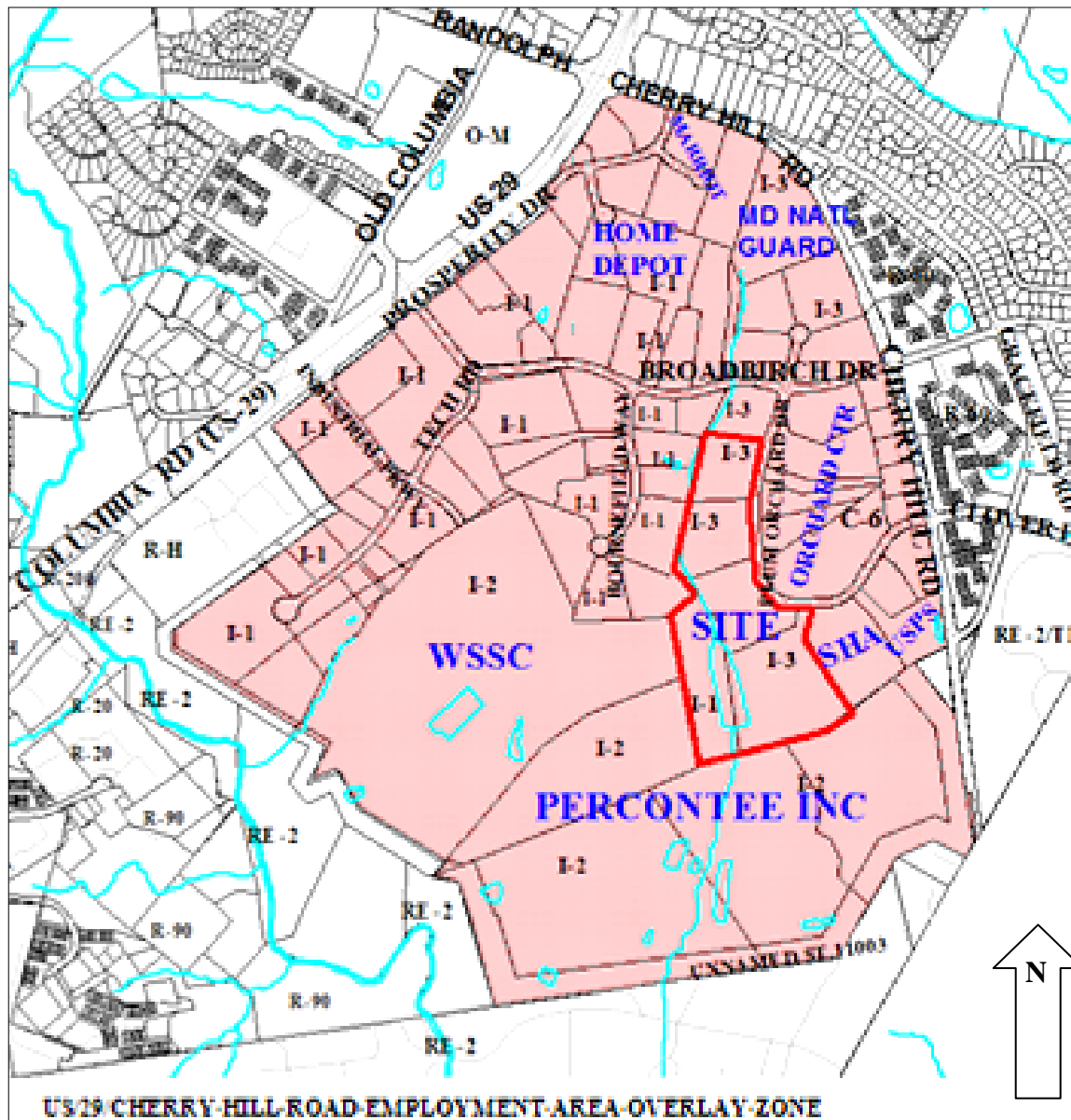
lake; however, it is not within a special protection area. The site drops significantly down towards the lake from all directions. The site has approximately 1,705 feet of frontage on Plum Orchard Road, from which it is accessed. Exhibit 102, pp. 16 and 26. Some of these features can be seen in photographs of the site (Exhibit 130):



B. The Neighborhood

The neighborhood was defined by Technical Staff (Exhibit 102, p. 16) as bordered by Colesville Road (US Rt. 29) and Cherry Hill Road to the north; Cherry Hill Road to the east; the Paint Branch stream and the northern boundary of the Naval Surface Warfare Center/FDA Relocation Site to the south; and Colesville Road to the west. This neighborhood includes a 400-acre area

identified as the US/29/Cherry Hill Employment area in the Fairland Master Plan (pp. 72-78). It is shown below in a neighborhood map from the Technical Staff report (Exhibit 102, p. 16):



According to Technical Staff (Exhibit 102, p. 16),

the neighborhood is developed with light industrial uses and low-density, retail commercial uses including a neighborhood shopping center. The neighborhood includes the 75-acre Montgomery Industrial Park that is classified in the I-1 Zone, the West*Farm Technology Park that also includes the subject site in the I-1, I-2 and I-3 Zones, the WSSC Site II in the I-2 Zone, and the Percontee sand

and gravel and concrete recycling operation, also in the I-2 Zone. The neighborhood also contains a 40-acre, 460,000-square-foot neighborhood shopping center (Orchard Center). The shopping center property is zoned C-6 [and is immediately to the east of the site, across Plum Orchard Drive].

Exhibit 161(c) shows the distances to the nearest residential developments, the closest one being

Riderwood Village, to the east across Cherry Hill Road, 952 feet from property line to property line:



Technical Staff describes the West*Farm Technology Park as developed with a mixture of high-tech and light industrial uses, as well as the State Highway Administration maintenance facility and a US Postal Service distribution facility, both just to the east of the subject site. A school bus depot is located about 1,000 feet west of the subject site, across Bournefield Way. Tr. 150-151. There is a water tower about 500 feet west of the subject property that is over 100 feet in height. Tr. 224. A Marriot Residence Inn Hotel is located at the northern extremity of the defined neighborhood, just south of Cherry Hill Road. To the southwest, the property abuts the former WSSC-Site #2³ and the Percontee excavation and recycling facility. Directly across Cherry Hill Road to the east are the Westfarm and Riderwood residential developments. There are five other special exceptions in the area, two hotels, a drive-in restaurant, a filling station and child care facility. Those are all within a commercial area, not within any residential area. Tr. 228.

Petitioner's land planner, Phil Perrine, agreed with Technical Staff's definition of the general neighborhood, except that he would have defined the southern border of the neighborhood by reference to Powder Mill Road, rather than the FDA site referenced by Technical Staff. Nevertheless, he found Technical Staff's definition acceptable. Tr. 223-224.

The Hearing Examiner considered extending the defined neighborhood further eastward, past Cherry Hill Road, to include the nearby residential areas, which will be affected by traffic and possibly helicopters serving the hospital, as well as benefiting from its services. However, Technical Staff's definition of the neighborhood, which is coextensive with the Master Plan's definition of the US/29/Cherry Hill Employment Area (page 75), makes sense because the neighborhood of the site is truly commercial/industrial, and not residential. Though there may be some impacts on surrounding

³ It is reported in the 1997 Fairland Master Plan (p. 74) that the WSSC facility created noxious odors which discouraged development in the area. Community Based Planning Technical Staff reports that within two years after adoption of the Master Plan, the County Executive approved closure of the WSSC facility, and in 2007, the County acquired its land, which is now called the Montgomery County High Tech Center. Exhibit 159, p. 3, and Tr. 227.

residential areas, all the evidence is that there will not be significant adverse effects. As stated by Community Based Planning Staff, “This use will not have direct impacts on any residential community since it is entirely within a non-residential area.” Exhibit 159, p. 1. The Hearing Examiner presumes that Staff means that the hospital will not have any adverse visual impacts on residential communities because of its distance from them. Other impacts, such as traffic and helicopter noise, are likely to be minimal, as discussed elsewhere in this report. Therefore, the Hearing Examiner accepts Technical Staff’s definition of the general neighborhood.

C. Proposed Use

1. The Overall Plan for the Hospital:

Petitioner’s proposed use for the subject site was summarized in the Technical Staff report (Exhibit 102, p. 15):

. . . Washington Adventist Hospital (WAH) requests approval of a special exception to establish and develop a Hospital Campus. The Hospital seeks to relocate its health care facility, currently located in Takoma Park, to the West*Farm Technology Park on Plum Orchard Drive, west of Cherry Hill Road in Silver Spring. The proposed development of the subject property will include a state of the art Main Building along with supporting physician offices and service facilities. The applicant contends that the new site provides WAH an opportunity to redesign the Hospital into a 21st century health care facility.

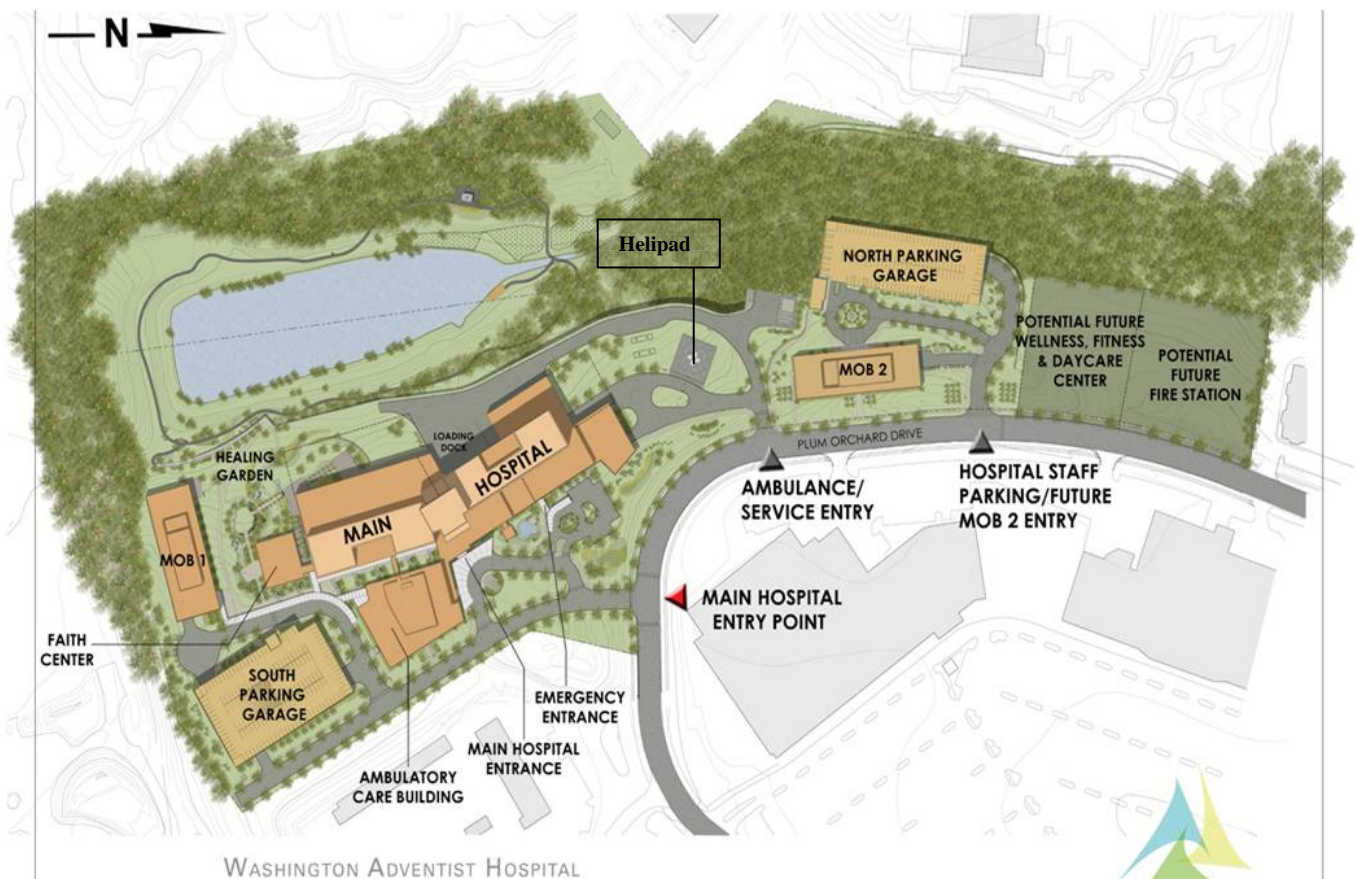
The proposal calls for the following facilities, all of which will be completed in Phase One, except for Medical Office Building 2 (MOB 2) and the possible future “Wellness Center”:

- A seven-story⁴ acute care facility (*i.e.*, Main Hospital Building) with 294 beds and an Emergency Department
- A ground-level helipad
- A two-story Ambulatory Care Building connected to the Main Hospital Building by an enclosed pedestrian bridge

⁴ Technical Staff refers to the acute care facility (*i.e.*, the main hospital building) as an eight-story edifice (Exhibit 102, pp. 14-15) because it will have eight functioning levels, but the lowest level (*i.e.*, the zeroth floor) is technically a cellar under the Zoning Ordinance, and it therefore is not a story. Tr. 85-86. The building will be approximately 126 feet, 8 inches tall, as measured from the average grade in front of the hospital. Tr. 84-85.

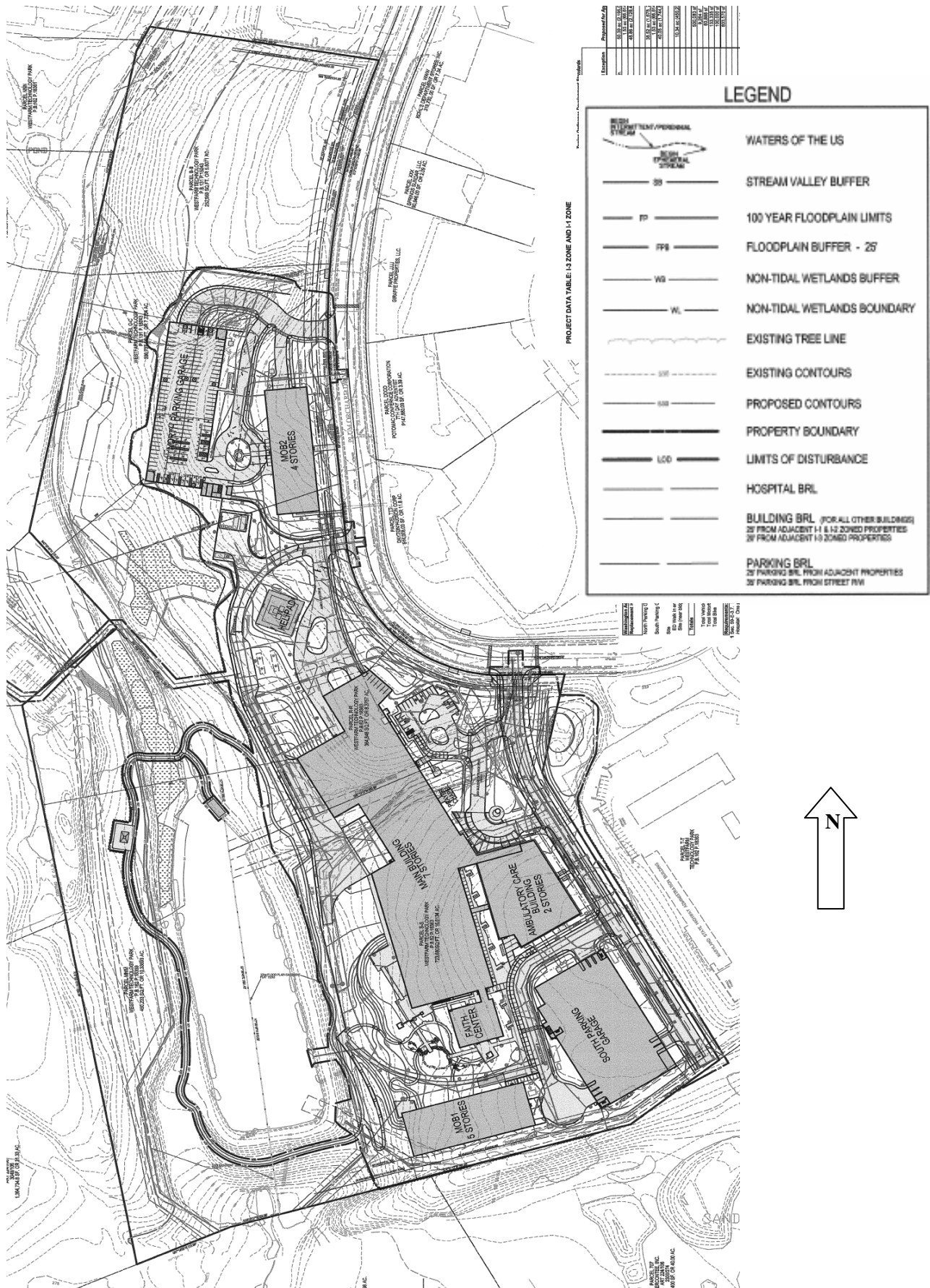
- A five-story Medical-Office Building (MOB 1)
- Two, multi-level Parking Garages (the North Parking Garage and the South Parking Garage), and a small surface lot adjacent to the Emergency Department, providing a total of 2,138 automobile parking spaces, 40 motorcycle spaces and 108 bicycle spaces.⁵
- A Medical Office Building (MOB 2) to be constructed in Phase 2
- A “Faith Center,” with a pedestrian connection to the Main Hospital
- A “Healing Garden” overlooking the lake
- Extensive green areas, walkways and a fitness trail around the lake
- Petitioner also contemplates the possibility of a future expansion to add a “wellness, fitness and daycare center” at the northern end of the campus.

These facilities will occupy a gross floor area of 803,570 square feet. Petitioner’s vision for the proposed hospital campus is best seen on a rendered site plan, introduced at the hearing (Ex. 128):



⁵ Technical Staff refers to 2,112 parking spaces, but that was later increased to 2,138 spaces, two more than the 2,136 spaces that would be required by Staff’s calculations.

Below is the site layout from the revised Composite Special Exception Site Plan (Ex. 161(e)):



The Project Data Table and Parking Details from the revised Composite Special Exception Site Plan (Exhibit 161(e)) are shown below:

PROJECT DATA TABLE: I-3 ZONE AND I-1 ZONE

	Zoning Ordinance Development Standards		
	Standard Development for I-3 with Overlay (As Applicable)	Hospital Special Exception	Proposed for Approval
Net Lot Area (AC):			
Gross Tract Area (acres)	20 ac min.	5 ac min.	50.39 ac (2,195,075 sf)
Less Previous Dedication	---	---	1.53 ac (66,614 sf)
Net Lot Area (acres) =			48.86 ac (2,128,461 sf) ¹
I-3 Zone Gross Tract Area			
Net Land Area (acres)	---	---	38.52 ac (1,678, 228 sf)
Previous Dedication	---	---	1.53 ac (66,614 sf)
Total I-3 Zoned Gross Tract Area (acres)			40.05 ac (1,744,842 sf)
I-1 Zone Gross Tract Area			
Gross Tract Area (acres)	---	---	10.34 ac (450,233 sf)
Hospital Gross Floor Area (GFA):			
Main Building			500,083 sf
Faith Center			9,284 sf
Ambulatory Care			60,883 sf
MOB1			133,335 sf
MOB2			100,000 sf
Total Gross Floor Area of Hospital	---	---	803,570 sf
Floor Area Ratio (FAR) =			
I-3 Zone FAR (based on I-3 Zoned gross tract area) ² :	0.5	---	0.43
Maximum FAR, provided applicant for development obtains approval of a traffic mitigation agreement at the time of site plan review, that will result in traffic generation equal to or less than a project with a FAR of 0.5	0.6	---	---
Green Space Requirement (percentage of gross tract area)³:	35% min - 17.64 AC.	---	38.74 ac (72.91%)
Off-street Parking Coverage (percentage of gross tract area):	45% max - 22.68 AC.	---	2.58 ac (5.27%)
Maximum Building Height (FT):	100' (N/A)	145'	145' (max.)
Minimum Building Setbacks (FT):			
From an abutting lot classified in the I-3 or R&D zones:	20' (N/A)	50'	50' minimum
From abutting commercial or industrial zoning other than the I-3 or R&D zones:	25' (N/A)	50'	50' minimum
From Plum Orchard Road (an industrial road that separates the zone from a commercial or industrial zone):	25' (N/A)	50'	50' minimum
From another building on the same lot:	30'	---	30' minimum
Minimum Parking, Loading, and Maneuvering Area Setbacks (FT):			
From abutting commercial or industrial zoning other than the I-3 or R&D zones:	25'	---	25' minimum
From an abutting lot classified in the I-3 or R&D zones:	20'	---	20' minimum
From Plum Orchard Road (an arterial road that separates the zone from a commercial or industrial zone):	35'	---	35' minimum
Street Frontage and access (FT):			
Amount of frontage each lot must have on a public or private street:	150' (N/A)	200'	1704.66'
Parking: (Note See Parking Schedule)			
Standard Spaces (Including surface spaces, accessible and van accessible spaces)		---	2138
Motorcycle Spaces		---	40
Bicycle Parking		---	108

¹ I-3 Zone Parcel BB 252,959 sf (5.80 ac)
 I-3 Zone Parcel CC 336,737 sf (7.73 ac)
 I-3 Zone Parcel RR 384,846 sf (8.38 ac)
 I-3 Zone Parcel SS 723,886 sf (16.61 ac)
 I-1 Zone Parcel MMM 450,233 sf (10.34 ac)
 Total Area 2,128,461 sf (48.86 ac)

² The Floor Area Ratio (FAR) was computed by dividing the Gross Floor Area of the Hospital (803,570 sf) by the Gross Tract Area of the I-3 Zoned Parcels BB, CC, RR and SS (1,744,842 sf).

³ In unusual circumstances, may be waived by the Planning Board at the time of site plan approval, upon finding that a more compatible arrangement of uses would result.

Washington Adventist Hospital Replacement Hospital Project	Parking Schedule *							
	Car (other than V or H)	(V) Van- Accessible HC	(H) Regular HC	Total Vehicles	Motorbike	Bicycle	Bicycle Locker	Total Bicycle
North Parking Garage	1,081	5	18	1,104	20	18	0	18
South Parking Garage	991	5	16	1,012	20	16	20	36
Site								
ED Walk in entrance	20	1	1	22	0	0	0	0
Site (near bldg entrances)	0	0	0	0	0	54	0	54
Totals	2,092	11	35	2,138	40	88	20	108
Total Vehicle	2,138							
Total Motorbike	40							
Total Bike	108							

Requirements:**1 Sec. 59-E-3.7. Parking Requirements.**

Hospital: One parking space for each 1,000sf of floor area, plus one space for each resident doctor, plus adequate reserved space for visiting staff doctors, plus one space for each 3 employees on the major shift.

Professional Office: Five parking spaces for each 1,000sf or gross floor area used by medical practitioners.

Source	Minimum Required by Code
--------	--------------------------

1sp/1,000sf floor area (Hospital)	
570,235sf/1,000	571
5sp/1,000sf (Medical Office Building)	
233,335sf x 5sp/1,000	1,170
1sp/resident doctor	
1sp/20doctors	20
Reserved sp for visiting staff doc	
10% of MOB doctors	75
1sp/3 employees	
900 employees/3	300
Total Min. Spaces Req'd by Code	2,136
Total Proposed Spaces	2,138

2 Sec. 59-E-2.3. Standards for bicycle and motorcycle parking.

(a) All parking facilities containing more than 50 parking spaces shall provide one bicycle parking space or locker for each 20 automobile parking spaces in the facility. Not more than 20 bicycle parking stalls or lockers shall be required in anyone facility.

(b) Bicycle parking facilities shall be so located as to be safe from motor vehicle traffic and secure from theft. Interior storage and lockers are encouraged. They shall be properly secure from theft. Interior storage and lockers are encouraged. They shall be properly repaired and maintained.

(c) Any owner or operator of a parking facility which charges a fee for the storage of motor vehicles may charge a reasonable fee for bicycle storage. A fee that is subject to Section 29-35A must comply with that Section.

(d) All parking facilities containing more than 50 parking spaces shall provide motorcycle stalls equal to at least 2 percent of the number of auto spaces. Not more than 10 motorcycle stalls shall be required on anyone lot.

(e) The provisions of subsections (a), (b), (c), and (d) pertaining to bicycle and motorcycle parking shall not be applicable for determining eligibility for parking lot district tax exemption.

Source	Minimum Required by Code	
	Bicycles	Motorcycles
North Parking Garage	20	10
South Parking Garage	20	10
Total Min. Spaces Req'd by Code	40	20
Total Proposed Spaces	108	40

3 Lead N-C 2.2 Credit 4.2: For commercial or institutional buildings, provide secure bicycle racks and/or storage (within 200 yards of a building entrance) for 5% or more of all building users (measured at peak periods).

* As provided by RTKL, on May 3, 2008.

Petitioner's vision and rationale for the relocated hospital is explained in its Operations Statement (Exhibit 101(ppp), pp. 3-5):

... the new location is in the center of the Hospital's primary service area and located along major interconnecting roads. This will make the Hospital more central and more accessible to all of its patients and communities in Montgomery and Prince George's Counties. This new Site provides WAH an opportunity to redesign the Hospital into a 21st century health care facility that will serve patients for many years to come.

Consistent with its heritage, WAH seeks to create a Hospital that holistically serves its patients and staff. This design concept, which is known as Planetree, was conceived by a patient in 1978. It has progressed and evolved into a nonprofit organization bearing the name. The Planetree philosophy calls on hospitals to continuously evaluate the health care setting from the perspective of the patient and incorporate this perspective in the culture of the organization and the facility. Planetree asserts that the physical environment is vital to the healing process of the patient. The surrounding physical environment is also important to assist caregivers in the healing process. Caregivers have observed that it is an impediment to the healing process for patients to recover in a cold impersonal space.

At the new Campus, WAH will implement Planetree and a variety of other evidence-based concepts to improve patient care in its Hospital design. With this design environment, the Hospital will be able to provide a homelike setting, just as it did when it was first built in 1907. The facilities will be laid out more efficiently to enhance the delivery of medical services and support patient dignity. Almost all patient rooms will be private, which is important in reducing infection rates, enhancing patient comfort and improving operational efficiency.⁶ A small number of mental health beds will be semi-private, in keeping with the treatment goals of that program. The Hospital will provide spaces for both solitude and social activities. Libraries, lounges, activity rooms, family areas and meditation rooms will be liberally incorporated into the facilities. The Hospital will also provide multiple opportunities for interaction with nature. Siting and building design will feature significant views of the Lake on the western portion of the Property. Trails will allow patients, visitors and staff to enjoy the Lake's solitude and healing effects. Gardens and other natural features will also be developed throughout the Campus to enhance the healing environment.

At the replacement Hospital, there will be ample space for physician offices and for parking. In addition to the Planetree design discussed above, this will make it easier to attract quality physicians, nurses and ancillary staff to care for patients. Moreover, the

⁶ It is also a regulatory requirement for new hospital construction. See Guidelines for the Design and Construction of Health Care Facilities, 2006, published by the Facilities Guidelines Institute (FGI) and the American Institute of Architects Academy of Architecture for Health (AIA), with assistance from the U.S. Department of Health and Human Services (Exhibit 161(q)), p. 40, ¶ 3.1.1.1(1): "In new construction, the maximum number of beds per room shall be one unless the functional program demonstrates the necessity of a two-bed arrangement. Approval of a two-bed arrangement shall be obtained from the licensing authority." These Guidelines are updated every three years and are routinely adopted by the states, including Maryland (COMAR 10.07.01.03 (2008)). Tr. 99-100.

Hospital will continue to provide its current scope of services in a more efficient manner through more modern and effective design.

WAH projects that the replacement Hospital will house the same compliment of beds it currently operates. However, this number of beds is subject to the licensing review of the Office of Health Care Quality and the Maryland Health Care Commission. The bed count may increase or decrease over time as a result of annual licensing reviews.

Operations at the new Hospital initially will include the following:

1. Cardiology: The Hospital will continue its practice of providing complete cardiac services.⁷
2. Cardio Vascular Treatment and Research: Physicians and researchers at the Hospital will continue to perform studies that range from arrhythmia treatments, to heart failure therapies, and to therapies for the treatment of angina and heart attacks. Many of these studies will include diagnostic testing, examinations, and medications at no charge to the patient.
3. Emergency Medical Care: In 2006, the Hospital's Emergency Department provided health care services to 41,950 patients, ranging in age from newborns to 90-year-olds, with a multiplicity of medical needs. At the new Site, patients utilizing the Emergency Department will be received through one of three portals - an ambulance entry, an urgent care/walk-in entry, or an on-grade emergency helipad. Ambulance traffic will be segregated from patient traffic accessing the Main Building.
4. Maternity: The Hospital will continue to have a staff of medical staff of board-certified obstetricians, a perinatologist, neonatologists and pediatricians, as well as nurses specially certified in neonatal care and inpatient obstetrics. The birth suites will provide a home-like environment, supported by state-of-the-art equipment.
5. Mental Health: Levels of service will continue to include inpatient care, partial hospitalization, intensive outpatient or weekly outpatient mental health services. Specialty programs will include adolescent outpatient treatment and substance abuse. Staff will be comprised of a multidisciplinary team of psychiatrists, registered nurses, psychiatric counselors, social workers and activity therapists.
6. Diagnostic Imaging and Image-Guided Interventional Radiology: The Hospital's Department of Radiology will provide a full range of radiological services as well as nuclear medicine technologies, serving both inpatient and outpatient needs. Cardiology and Vascular Medicine departments provide other image-guided diagnostic and interventional procedures. . . .
7. Outpatient Services: The replacement Hospital will continue to offer a full complement of outpatient services, such as surgery, oncology, cardiology, physical

⁷ Washington Adventist Hospital is one of two tertiary cardiac providers in Montgomery County and the longest standing provider of tertiary cardiac services. Tertiary services are a more invasive and direct treatment of inherent disease, including open heart surgery and therapeutic intervention in coronary artery disease. In the new hospital, there will be a replication and perhaps an expansion of the cardiac facilities. Tr. 49-50, 115.

rehabilitation, health and wellness education and a variety of other diagnostic services.

8. General Hospital Services: In addition to these specialized services, the Hospital will continue to provide full-service inpatient and outpatient care on a 24-hour per day, 7 days a week basis.
9. Other services will be provided as a part of the evolution of health care and as part of meeting the needs of the patient population.

Jere Stocks, the president of Washington Adventist Hospital, testified that the hospital decided in 2005 that it needed to relocate in order to best expand services, enhance facilities and increase access to healthcare. The current location in Takoma Park is inadequate in size (with 13 usable acres), access and parking, and it has aging and inefficient facilities. After the move, the Takoma campus will still be used for some form of health and community services. It will not have in-patient beds, but it will have accessible primary care, special care and urgent care services, important parts of the safety-net structure.

The subject site was chosen because the White Oak/Fairland area right off of Route 29 and Cherry Hill Road is the very center of the Hospital's service area. The Department of Hospital Associations defines the primary service area as where 60 percent of the patients come from. The present location of the hospital is in the furthest southern tip of that service area. The proposed site is easily accessible, and it is in a commercial area. The nearest residential areas are off to the east, such as Riderwood, a large retirement community with over 3,000 residents. The site is not far from Interstate 95 and the proposed Inter-County Connector, as shown on Exhibit 126. Its size makes it possible to establish adequate space for physicians' offices, and their availability on the campus will benefit patients and physicians, alike.

The site also has amenities, such as the lake, which will provide a good environment for healing. It is large enough to provide for single-patient rooms, two garages and surge capacity if

needed in emergencies. The campus was designed with the next 70 years in mind, not just the immediate future. The hospital will be expandable, including the Emergency Department (ED) capacity and additional critical care infrastructure, ICUs and the like. Even without new construction, the top (seventh) floor of the Main Hospital Building will be built right now with a shell space, so if community needs arise, the hospital can grow 60 beds within a fairly short period of time. The plan is to begin construction on this new hospital in 2010, with an opening date in 2012. Tr. 16-35.

The main hospital building, the ambulatory care building, medical office building 1, the south parking garage, and the faith center will all be on the southern end of the campus, while the helipad, the north garage and medical office building 2 will be at the northern end. The property is about 48 acres, and approximately 73 percent of the site will remain open and natural, with a floor area ratio (FAR) of about 46 percent. Petitioner sought to design a cost-effective development of a “sustainable nature,” combining green architecture and good practices. Tr. 79. Petitioner will apply for LEED (Leadership in Energy and Environmental Design) certification for this hospital.⁸ The design also seeks to take advantage of the natural features to relieve stress on the patient. There will be extensive “Healing Gardens” around the western and southern side of the hospital, in between the hospital and the lake, to take advantage of the lake view. The access points and building entrances are designed to be convenient and visible to ease “way-finding” and to avoid stacking. Tr. 105.

2. Details About Proposed Structures:

Petitioner’s plans include the following specifics with regard to each planned structure:⁹

Main Hospital Building:

The Main Building will be approximately 126 feet, 8 inches tall, as measured from the average grade along the front of the hospital. The hospital’s general character design is to blend in

⁸ LEED is an established criteria checklist by which a building’s sustainability is judged. Tr. 108.

⁹ Most of this description is from the testimony of Petitioner’s architect, Scott Rawlings. Tr. 70-116.

with nature and be very sustainable for the area. Heavier materials will be used along the base, primarily polished concrete or polished block. Sitting on top will be a very stable, pre-manufactured panel, probably in some type of wood material, with “rain screen.”¹⁰ In the opinion of Petitioner’s architect, Scott Rawlings, combining the wood materials and the weathered metal at the windows, sitting on top of a smooth stone base, works well with the surrounding area and nature. Tr. 103. Exhibit 134 contains illustrated renderings of the hospital’s design.



¹⁰ Rain screen means a skin is applied to the outside and allows the weather, the rain and the wind to breathe with the building. It allows the building to have a longer life. Tr. 103-104.

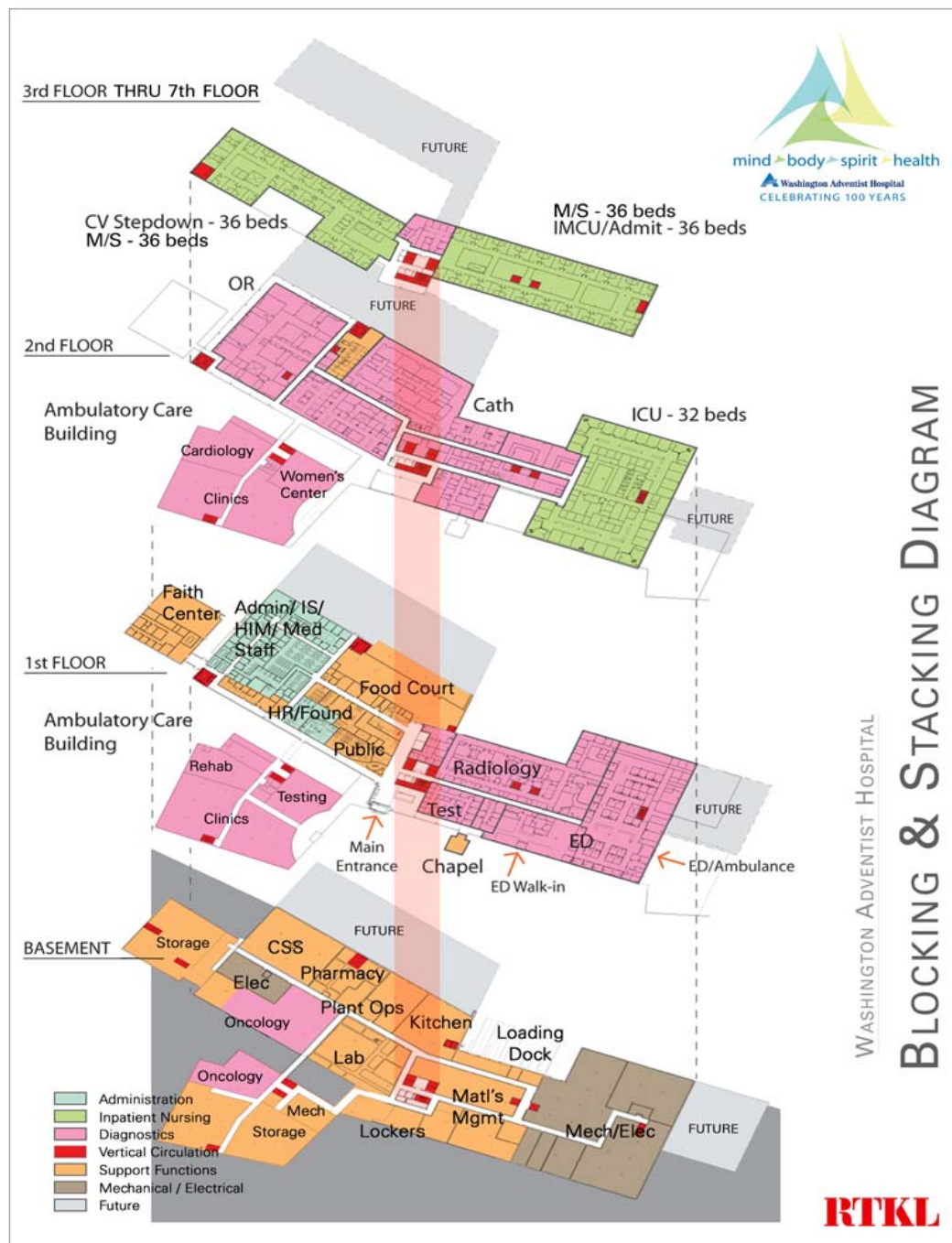
The glass along the main two levels, characteristic on all sides, allows ample natural light into the building on those two main public levels and allows for easier way-finding. The interior of the hospital is designed so that 80 percent of the public and visitors will move along the front spine on the east side of the hospital. They will always have natural light to one side, giving them a connection to the outside and allowing them to keep orientation. They will be able to move along and access all points of the hospital from that corridor, so they never have to “dive deep” into the hospital. Tr. 105.

Exhibit 135 contains four elevations of the main hospital building:



The main hospital will have approximately 500,000 gross square feet of floor area. The ICU, the emergency room and radiology are at the north end of the hospital. The south end contains primarily administrative functions and public functions. The interior has an “on-stage/off-stage”

design, in which there is an off-stage corridor and transportation system along the back of the hospital to move staff, and an on-stage corridor system that runs along the front, which will move pedestrians, visitors, and family. Tr. 85. The building will rise seven stories, with an eighth lower level (*i.e.*, a zeroth floor) below grade. Exhibit 133 is the blocking and stacking diagram for the hospital, showing the functions at each level:



The zeroth level, the lowest level of the hospital, is not for patients or visitors. It is for staff, materials management, storage and hospital equipment, such as the main plant of the hospital, the main generators and similar items. The first floor has the main entrance and the emergency entrance, as well as other public areas, such as the food court, gift shop and pharmacy. It also contains administrative and medical staff offices on the south end and the emergency department (ED) on the north end. Level 2 is a “super diagnostics floor.” It combines operating rooms, “Cath” (*i.e.*, arterial catheterization) labs and the ICU beds on a single plane. Patient rooms are in the tower stacked above, on levels 3, 4, 5, 6, and 7, with the top floor, level 7, designed as a shell floor initially. All of the patient rooms are in two flanking race tracks around a central core. It is referred to as “a race track” because the patient rooms run along the outside, and the core nursing functions are in the center, which is the best and most efficient nursing layout. Tr. 99. The patient rooms, which are designed for single occupancy, are configured into two, flexible, 36-bed units on each floor.

The main loading and service area for the hospital is along the west side of the building, in the back of the hospital, taking advantage of the fall of the land. It has been located and designed to avoid disrupting any of the basic operations of the Hospital, and to be screened from views of Hospital users. Service vehicles will come off of the ambulance service road, between the hospital and MOB 2, directly off of Plum Orchard Drive, swing around the hospital to the west, come to the south and directly access the loading dock to the west of the hospital. There are up to four active loading zones at one time, and this is also where trash pick up and waste removal would occur.

Ambulatory Care Building:

Directly to the east of the main hospital is the Ambulatory Care Building. This is a separate structure tied directly back to the main hospital at the entrance with an enclosed bridge. The bridge will move staff and patients directly from the main diagnostic portion of the hospital into Ambulatory Care.

The main function of the building is to provide heavy outpatient or ambulatory care services, so that the resulting pedestrian flow does not need to interact with the population in the main hospital. The Ambulatory Care Building is two stories, with a cellar. It is approximately 32 feet tall and has about 60,000 gross square feet of floor area. Exhibit 136 shows the Ambulatory Care Building elevations.



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

All of the secondary buildings on the complex are designed to blend in with the main hospital building and have the same character. Thus, they will be constructed with materials similar to what will be used on the base of the hospital, polished concrete, polished block and glazing systems.

Medical Office Building 1:

Medical Office Building 1 is at the south end of the campus, west of the South Parking Garage. It is a standard medical office building, rising five stories, with a cellar. It will have

approximately 132,000 gross square feet of floor space and be 60 feet tall. It will contain primary physician offices and varied medical practices. Each MOB also has its own small loading dock. Exhibit 137 contains the elevations for both MOBs 1 and 2. Their design is in keeping with the character of the complex. Only MOB 1's elevations are shown below:



NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION

The Faith Center:

Directly to the west of the parking garage at the south end of the hospital is the Faith Center, which will be physically connected to the main hospital building. It is one story, approximately 16 feet tall, and will contain offices, educational facilities and a non-denominational chapel seating approximately 100 people. It will look west towards the Healing Gardens and the lake.

Medical Office Building 2:

On the north end of the campus, in Phase 2, a second Medical Office Building, MOB 2, will be erected. It will be primarily for office functions, physicians, family practices, and the like. It will be four stories (approximately 48 feet) tall, and contain approximately 100,000 gross square feet of floor space. Its elevations from Exhibit 137 are shown below:



South Parking Garage:

The South Parking Garage is six levels, four above grade, two below grade, and contains about 1,000 spaces. It is the primary parking garage for the patients at the hospital. Patients and visitors will come down Plum Orchard Drive onto the main hospital drive, drop off at the main entrance, circle back out and park in the South Parking Garage. There are three access points to the parking garage (north, east and west) to provide multiple points of entry and access from the drives. The garages are similar in character and are designed to blend in with their surroundings. They will have a lot of landscaping around the edges to make them blend. The south parking garage rises up four levels, and it will create a visual barrier between the campus and the adjacent property. Its elevations from Exhibit 138 are shown below:



SOUTH PARKING GARAGE - EAST ELEVATION



SOUTH PARKING GARAGE - NORTH ELEVATION



SOUTH PARKING GARAGE - WEST ELEVATION



SOUTH PARKING GARAGE - SOUTH ELEVATION

North Parking Garage:

The North Parking Garage will be directly to the west of and behind MOB 2 . It will be similar in size to the South Parking Garage, but the North Parking Garage will be completely below grade as viewed from the east (except for the top surface), and it will thus appear to blend in with the ground and almost disappear. It will hold approximately 1,000 cars and serve primarily staff for the

hospital and patients and visitors for MOB 2. The northern entrance off of Plum Orchard Drive will directly access MOB 2 and the North Parking Garage, separating that traffic from ambulance and other traffic. The North Parking Garage's elevations from Exhibit 138 are shown below:



NORTH PARKING GARAGE - EAST ELEVATION



NORTH PARKING GARAGE - NORTH ELEVATION



NORTH PARKING GARAGE - WEST ELEVATION



NORTH PARKING GARAGE - SOUTH ELEVATION

The staff will park in the North Parking Garage and will travel about 560 feet on a pedestrian path to the west into the hospital at the staff entrance near the ED. The extra 60 feet of distance from the entrance was necessary to keep the structure out of the wetlands. Also, by moving it 60 feet to the north, it is bit out of the steepest fall of the site, allowing a better pedestrian walking path to the hospital. The North Parking Garage will not be used by patients accessing the main hospital. Thus, the 560 foot distance is not likely to be traversed by anybody other than staff.

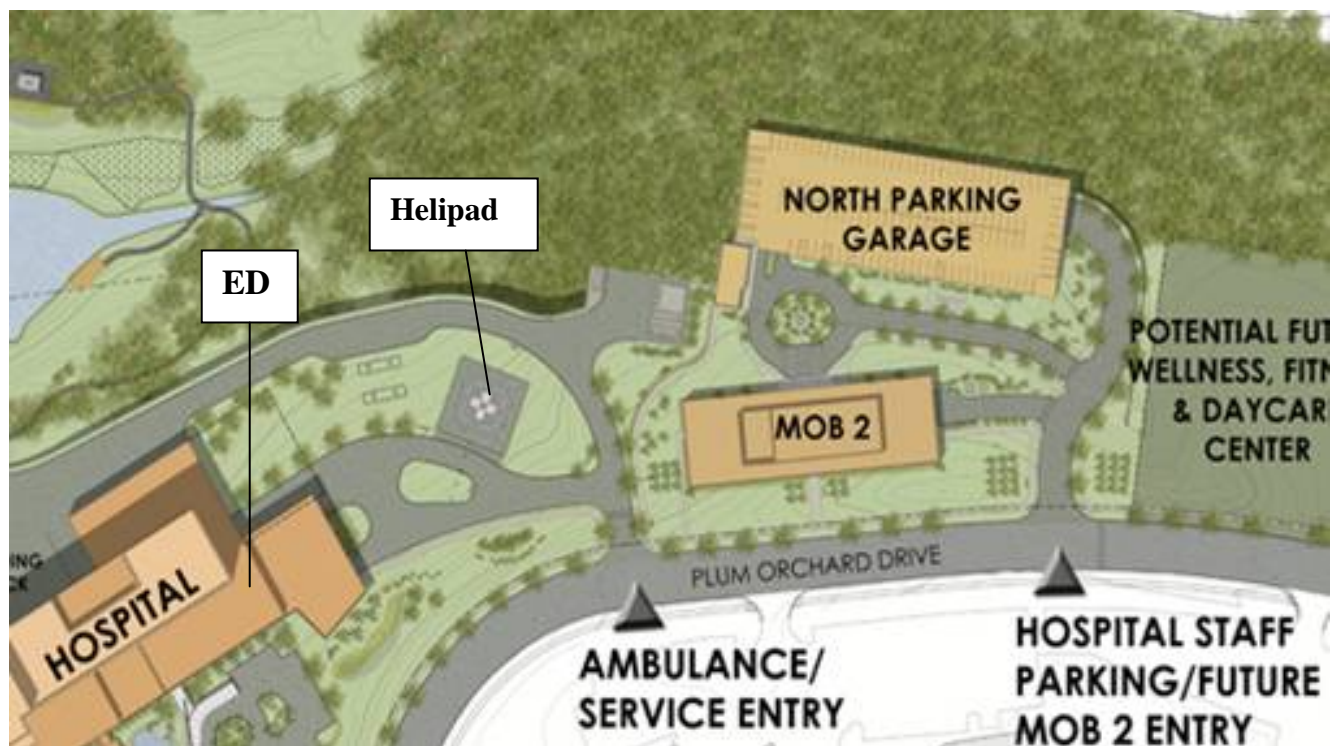
The Helipad:

Between the North Parking Garage and the Main Hospital Building will be the helipad. The helipad is surface mounted, not on top of the building. It is directly adjacent to the emergency room, and it is positioned along the path of the ambulance. A safety gate will drop to prevent service trucks from accessing the loading dock service road to the west of the hospital during a helicopter approach.

There will also be a third gate preventing any ambulances from leaving the emergency room drop off lot and accessing Plum Orchard Drive during helicopter arrivals. Tr. 91-92.

The helicopter pad is approximately 80 feet by 80 feet, and it will be designed by in accordance with FAA and State Police guidelines. It will be shielded on the ground with landscaping and a man-made barrier. The helicopter approach will be into the prevailing wind, along Plum Orchard Drive, to the helipad. Helicopters can land on top of hospitals, but that is more expensive and a little more dangerous in the event of a fuel fire or explosion. Tr. 92-93. The ground placement also allows more opportunity for changes in technology and equipment.

In the event of a large scale natural disaster or something similar to a terrorist attack, the north parking garage will be used as a large triage center. That triage center is best positioned directly adjacent to the emergency room and with enough room in between to bring in vehicular traffic. The helipad would be part of the access during such a surge. Tr. 94. It is shown below in a magnified portion of Exhibit 128:



Geoffrey Morgan, the Vice President for Expanded Access of WAH, testified¹¹ that he was the administrator responsible for implementing the rooftop helipad that is currently operating at the Takoma Park location. Petitioner has operated that helipad for over 12 years and experiences approximately 250 flights in and out of the hospital each year, with the predominant number of flights for cardiac transfers into the advanced cardiac program.

Petitioner expects the use on the new campus to be consistent with the current experience in Takoma Park. The helipad will be used primarily to accept inbound cardiac emergencies originating from other health care facilities. The emergency helipad will also be used to medevac certain patients to health care facilities in order to provide higher levels of care, such as for burn, trauma, neurological conditions, high risk pregnancies, neonatal emergencies, and other acute pediatric conditions. There will be no non-emergency flights. Petitioner actually logs every flight that comes in or goes out and collects extensive amounts of information on each flight, including the time of day, the point of origin, the receiving physician, the patient's condition, and the like. Petitioner will make its log of helicopter flights available to the Department of Permitting Services (DPS).

Petitioner has been careful and attentive to the environmental impact of the planned helipad, and Petitioner invited Maryland State Police Aviation Division to come in and review the project and advise Petitioner on its plans. The current design addresses a number of objectives for future helipad operations. It is important to have the helipad close to the hospital's emergency department, while avoiding major building structures such as elevator penthouses, cooling towers, and fresh air intake vents. It must be far enough from the magnetic resonance imaging (MRI) equipment to avoid negative effect on aviation instrumentation, so the ground level pad, set apart from the hospital and the parking structure, is an ideal location. The proposed location also provides greater safety and

¹¹ Mr. Morgan's testimony regarding the proposed helipad and helicopter operations is contained in pages 55 to 65 of the hearing transcript. The following description is largely a quotation and/or paraphrase of his testimony on this matter.

effectiveness with respect to snow and ice removal. The ground-level helipad avoids the noise and vibration associated with the rooftop landing and supports potential use by military helicopters in the event of disaster relief operations.

Petitioner will take a number of ground measures to prevent safety problems. Petitioner intends to construct a barrier surrounding the helipad to prevent pedestrians from gaining access to the landing zone, and a series of security gates are also proposed to stop traffic from obstructing the helicopter landing, which is a brief event. Petitioner has a very good relationship with the medevac providers. Petitioner receives a communication by radio to hospital security services about 20 minutes in advance of helicopter arrival, and that gives the hospital the opportunity to mobilize security personnel to go out and facilitate the safety of pedestrians and vehicular traffic.

Flight paths are determined by many factors, as pilots approach a hospital. There are advisories by the FAA and other entities governing flight paths for helicopters, but Petitioner works with its providers to create a noise sensitive approach to the campus. In the Takoma Park location, it is a steeper than normal approach, essentially over the campus of the hospital, and it is something that Petitioner monitors and reviews with the medevac provider if there are issues or concerns. On the new campus, given the general wind directions and the building locations, helicopters will generally arrive from the east and south, near the Orchard Shopping Center and Plum Orchard Drive, and then depart off to the north and to the west.

In response to the Hearing Examiner's question as to whether the flight path in would take the copters over residential areas to the east of Cherry Hill Road, Mr. Morgan stated that, in Takoma Park, Petitioner has worked out a system with the medevac providers so that they use a steeper than normal descent to the facility. Petitioner expects to have a similar approach and flight path for this campus. Mr. Morgan reported that the Maryland State Police expect to travel along major roadways

and bring the helicopters in over the Orchard Center and the industrial area, at a higher altitude, and drop steeply over the hospital campus. The idea is to use a noise-abatement strategy with respect to their approach. According to Mr. Morgan, that actually has worked in Takoma Park, which has a much tighter residential footprint.

Based on this record, the Hearing Examiner finds that the proposed helipad location is appropriate for this site. In response to a question from the Hearing Examiner, Petitioner's attorney, Robert Brewer, indicated that Petitioner would be amenable to the conditions regarding helicopters imposed by the Board of Appeals in the case of Montgomery General Hospital, CBA-2521-I (effective January 18, 2008)), if the Hearing Examiner thought them appropriate.¹² Tr. 65-66. The Hearing Examiner has recommended similar conditions in Part V of this report in order to insure that the impact of helicopter noise and vibration upon nearby residential communities is minimized.

These conditions include, as always, a requirement that the operation of the special exception, including the helipad, must comply with all applicable federal and local regulations, as specified in the final condition recommended in this report. Also, a log of flights should be maintained to insure that the helipad continues to be used only for medical necessity. (It is a permitted use only as an "emergency helipad.") In addition, a condition is recommended requiring Petitioner to review the helicopter flight paths and determine which ones will minimize disturbance to the surrounding

¹² The Board's Opinion in Montgomery General Hospital, CBA-2521-I (effective January 18, 2008)), expressly adopted the Hearing Examiner's analysis regarding the Board's jurisdiction to regulate placement of the helipad, as discussed in pages 44-54 of his report in the Montgomery General Hospital case. The Hearing Examiner concluded in that case that the right to establish an emergency helipad on hospital grounds may be inherent in the special exception based on Zoning Ordinance §59-A-6.6(a), but the site conditions of a particular proposed hospital, including its location and its neighborhood, are never inherent, and may serve as the basis for denial of a special exception, if the hospital, with its helipad, would create a nuisance due to those site conditions. Moreover, while the existence of an emergency helipad on hospital grounds is a permitted use under Zoning Ordinance §59-A-6.6(a), its placement and operational characteristics may be non-inherent characteristics of the special exception site, and such non-inherent characteristics of a special exception site are generally subject to regulation by the Board of Appeals to minimize adverse impacts on the neighbors, pursuant to Zoning Ordinance §§59-G-1.21 and G-1.22(a). Harmonizing the various statutory provisions, the Hearing Examiner concluded that the Board may not prohibit a hospital's emergency helipad or impose conditions that would render its operation unsafe or ineffectual, but within those parameters, it may regulate placement and operational characteristics to minimize adverse impacts on the neighbors.

community. To the extent that WAH has control over the flight paths used, it should establish a preference, consistent with safety and operational concerns, for using the flight paths which minimize disturbance to the surrounding community. If Petitioner does not control the flight paths, then it should consult with the appropriate controlling authority to encourage use of the flight paths which minimize disturbance to the surrounding community, without adversely impacting safety and operational considerations. The results of Petitioner's review should be submitted to the Board within six months after the helipad becomes operational. This condition does not require Petitioner to change any operational features if they are needed to insure safety and functionality. It merely requires that, within those parameters, issues relating to noise and vibrations be addressed.

Future Expansion:

Exhibit 139 shows the expansion plan on the site. It is not part of the special exception, but it indicates Petitioner's thinking for the future development of the hospital to a 400 bed facility. That will require a small expansion to enlarge ED capabilities, and it will require an additional tower to the west, between the main hospital building and the lake. There is a long-range strategic plan for the hospital (Exhibit 140), which contains set of documents outlining the future potential of the hospital. The future expansion plan (Exhibit 139) is shown below:



3. Staff and Hours of Operation:¹³

The plan for the new hospital is to employ approximately 2,000 employees to serve staffing requirements for approximately 1,300 full-time equivalent employees. The medical staff consists of approximately 600 practicing physicians with privileges at the hospital. In addition, there are approximately 30 house-based physicians – emergency physicians, anesthesiologists, surgeons, “intensivists” (*i.e.*, critical care physicians) and the like. About 100 physicians in private practice visit the hospital each day to provide services. Approximately 500 additional employees will work in the two medical office buildings (“MOBs”) on the Campus.

As would be expected of a hospital, it will operate around the clock. There are 8 to 10 different shifts, varying in length, that start anywhere from 4:45 in the morning through as late as 10:45 in the evening. They will be organized to minimize peak hour traffic periods, approximately as follows:

4:45 am – 1:15 pm
5:45 am – 2:15 pm
6:45 am – 3:15 pm
6:45 am – 7:15 pm
6:45 am – 11:15 pm
2:45 pm – 11:15 pm
2:45 pm - 7:15 pm
6:45 pm - 7:15 am
10:45 pm – 7:15 am

The main shift, where the critical mass of staff will be on site, would be 6:45 in the morning to 3:15 in the afternoon. About 56 percent of the 1,300 full time equivalent employees will work between 6:45 a.m. and 3:15 p.m.

There are about 96,000 patient visits to the hospital each year, and it customarily grows about 3 percent a year. Patients are of all religious beliefs. The 96,000 figure includes the admitted

¹³ Information in this section is based on the testimony of Mr. Morgan (Tr. 50-53) and the hospital’s Operations Statement (Exhibit 101(ppp), pp. 5-6).

patients, the ambulatory or out-patients and the emergency care patients. It is expected that there will be 50,000 emergency encounters per year at the new site. About 80 percent of the emergency department encounters are walk-ins, leaving 20 percent that arrive by ambulance. There are also about 700 visitors per day. In addition to these visits, there are deliveries to the hospital of all kinds of supplies made continuously.

4. Parking and the Parking Waiver Request:

Parking Spaces Required and Supplied:

Technical Staff determined, pursuant to Zoning Ordinance §59-E, that 2,136 vehicle parking spaces were required for the use, plus 20 motorbike spaces and 20 bicycle spaces, as set forth in a Table on p. 25 of the Staff report (Exhibit 102). Petitioner accepted this determination, except that it calculated that Technical Staff had understated the number of bicycle spaces required by Zoning Ordinance §59- E-2.3. By Petitioner's calculation, each garage is required to supply 20 bicycle spaces, resulting in a requirement for a minimum of 40 bicycle spaces. Petitioner will far exceed that minimum, by providing 108 bicycle spaces, 20 of them in lockers. It will also provide 40 motorbike spaces, twice the number required, and 2,138 vehicle parking spaces, two more than required.

Technical Staff's chart is reproduced below, modified to show the correct numbers:

Off-Street Parking	Required	Proposed
1sp/ 1,000 SF floor area (Hospital)= 570,235sf/1,000	571	
5 sp/ 1,000 SF (Medical office bldg.) 233,335sf X 5/1000	1,170	
1sp/resident doctor=1sp/20 doc	20	
Reserved sp for visiting staff doctor 10% of 310 MOB doctors.	75	
1 sp/3 employees-900 employees/3	300	
Total parking spaces required	2,136	2,138
Minimum Bicycle parking	40	108
Minimum Motorcycle parking	20	40

Petitioner set forth the parking breakdown on its revised “Composite Special Exception Site Plan” (Exhibit 161(e)), reproduced on page 16 of this report. That breakdown also indicates that 35 of the vehicle spaces will be Regular Handicapped Accessible and 11 will be Van Accessible Handicapped spaces. All of the vehicle spaces, except for 22 surface spaces near the Emergency Department, will be in the North and South Garages.

The Hearing Examiner finds that Petitioner has met all the requirements for off-street, vehicle, bicycle and motorbike parking.

The Parking Waiver Request:

Petitioner has requested a waiver of the requirement contained in Zoning Ordinance §59-E-1.3(a) that a parking facility be located within a 500-foot walking distance of the establishment served, so that the North Parking Garage may be located at a walking distance of up to 560 feet from the Main Building of the Hospital. Such a waiver may be made by the Board of Appeals pursuant to Zoning Ordinance §59-E-4.5, after notice to adjoining property owners and affected citizen associations, and a determination that Zoning Ordinance §§59-E-4.2 and 4.3 will be satisfied.¹⁴ Petitioner did provide the required notice (Exhibit 110), and no objections were received. Both Technical Staff and the Planning Board recommend approval of the requested waiver (Exhibit 102, p. 1 and Exhibit 124, p. 3), as does the Hearing Examiner.

¹⁴ Section 59-E-4.5. Waiver - Parking Standards, provides:

The Director, Planning Board, or Board of Appeals may waive any requirement in this Article not necessary to accomplish the objectives in Section 59-E-4.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards. Any request for a waiver under this Section must be referred to all adjoining property owners and affected citizen associations for comment before a decision on the requested waiver.

Although §59-E-4.5 does not mention §59-E-4.3, the latter section provides detail of the requirements for the parking facility plan, and its terms must therefore also be satisfied.

Technical Staff notes in its discussion of the waiver issue (Exhibit 102, p. 39) that the waiver request resulted from Staff's determination that the North Parking Garage had to be moved from the originally planned location so that it would be out of the wetland buffer. As stated by Technical Staff:

The special exception site plan that was initially submitted with the application has been revised to address various environmental and design issues raised by staff. The revised plan was submitted shifting the North Parking Garage approximately 160 feet¹⁵ north of its original location. The relocation, while effectively removing the parking garage from the wetland and environmental buffer, extended the parking facility distance from the main building beyond the maximum required 500 feet triggering a need for a waiver from the requirements of Section 59-E-1.3(a).

Staff accepted Petitioner's justification of the parking waiver request, discussed below, and concluded, "The revised location of the North Garage renders the overall design of the Hospital Campus more functional, attractive, and in keeping with the environmental guidelines of the county. The approximately 160 feet shifting of the location of the garage is minor and would not contradict the objectives of Section 59-E-4.2" Exhibit 102, p. 42.

Petitioner's architect and its land planner, Scot Rawlings and Phil Perrine, testified that the North Parking Garage would be used only by users of MOB2 and by hospital staff, who would be familiar with the route. No hospital patients or visitors would have to trek the 560-foot path to reach the hospital because they will park in the South Parking Garage. Tr. 90-91; 230-231. Walking distance for users of MOB2 is not an issue because it is quite close to the North Parking Garage, and MOB2 users will constitute approximately 60% of the garage's pedestrian traffic. Messrs. Rawlings and Perrine also noted that, while changing the location of the North Parking Garage lengthened the walk to the Main Hospital Building by 60 feet, it also moved the walkway to a better grade for pedestrian travel and thus made it a better path for those traversing it.

¹⁵ It is not entirely clear in the record whether the building's location has been shifted 160 feet (as quoted above from the Technical Staff report) or 60 feet (as testified to by Petitioner's architect, Scott Rawlings, Tr. 90), but the salient fact, which is clear in the record, is that the walking distance to the Main Hospital Building will be increased to 560 feet, which is 60 feet greater than the 500-foot standard set out in Zoning Ordinance §59-E-1.3(a).

Petitioner also provided a lengthy written justification for the parking waiver, describing how the requirements for a parking waiver contained in Zoning Ordinance §§ 4.2 and 4.3 would be satisfied in this case, thereby justifying the requested waiver (Exhibit 101(yyy)):

* * *

Objectives of Parking Facility Plan [Section 59-E-4.2]

The following justification addresses each of the four objectives, provided in Section 59-E-4.2, that a parking facility plan must accomplish:

- (a) *The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.*

The North Parking Garage is situated such that to the west is a forested stream valley buffer in excess of 190 feet in width; to the south is the proposed Hospital Emergency Department, ambulance arrival area, and helipad; to the east is the proposed MOB 2 (situated between the North Parking Garage and Plum Orchard Drive); and to the north is undeveloped land (contemplated to be developed in the future with a wellness center). Thus, the only users of adjoining land potentially affected by the North Parking Garage (with or without its relocation) are future users of the wellness center. Landscaping is proposed along the north edge of the garage, which would screen the wellness center from the North Parking Garage. In addition, most of the parking spaces in the North Parking Garage are located below grade with only one level of surface parking, thereby reducing the impact of the facility on any users of the property to the north. This arrangement, with respect to adjacent users, does not change because of the relocation of the North Parking Garage. Thus, the objectives of Section 59-E-4.2(a) are met even though the maximum distance from the North Parking Garage to the Main Building is exceeded.

- (b) *The safety of pedestrians and motorists within a parking facility.*

Staff driving to the North Parking Garage will access the lower levels of the structure on the north side and visitors to MOB 2 will arrive on the surface level via a driveway and utilize the garage's upper levels. This physical separation is designed for safety and to provide easy access to the garage users' final destinations.

The North Parking Garage is arranged for staff, such that, after parking their cars, staff makes their way to the south exit of the facility closest to the Main Building. A pedestrian pathway then leads pedestrians toward Plum Orchard Drive, across the Emergency/Service entrance drive, and then directly to the Main Building. The pathway is visually obvious and clearly delineated - providing a very straightforward path to the Main Building with only one driveway crossing. As previously stated, the pathway will be utilized by Hospital staff, who will be informed of the pathway system and will become very familiar with its route. Staff

utilizing the pathway will be quite removed from the vehicular access to the garage, thereby providing for their safety. This objective continues to be met notwithstanding that the walking distance is in excess of 500-foot maximum.

- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.*

The North Parking Garage is designed to provide a safe circulation system with visitors to MOB 2 arriving at the surface and upper levels and the staff arriving directly to the lower levels via a driveway on the north side of the structure. This access system has not changed with the shifting of the location of the North Parking Garage to the north. The entrance/exit driveway to Plum Orchard Drive will shift approximately 40 feet to the north from the present Plan location. This new driveway point of access still will be located midway between, and approximately 300 feet from, two driveways on the opposite side of Plum Orchard Drive, thereby reducing and preventing traffic congestion. The additional walking distance still permits this objective to be met.

- (d) The provision of appropriate lighting, if the parking is to be used after dark.*

Lights are provided because the North Parking Garage will be utilized after dark; shifting this garage further to the north will not affect the lighting. The pedestrian pathway also will be lighted, as previously proposed, and located close to Plum Orchard Drive in a safe location. This objective is met even though the walking distance exceeds the 500-foot maximum.

Requirements of Parking Facility Plan [Section 59-E-4.3]

Section 59-E-4.3 of the Zoning Ordinance lists five provisions that must be satisfied in order to accomplish the Parking Facility Plan objectives of Section 59-E-4.2. The following justification addresses each of these provisions and indicates the manner in which they are satisfied even though a waiver is requested to the 500-foot maximum walking distance provided in Section 59-E-1.3(a).

- a) Effective landscaping of parking lots contiguous to or adjacent to any public road shall be provided in accordance with the landscaping requirements of section 59-E-2.7.*

The North Parking Garage is set back 250 feet from Plum Orchard Drive behind MOB 2 and does not abut a public road. As such, no street landscaping is required. However, the Plan provides for the supplementation of street trees along Plum Orchard Drive with proposed extensive planting of shade trees and deciduous shrubs along the sides of MOB 2 and between the parking area and MOB 2. None of the proposed landscaping is affected by the increase in walking distance due to the northward shift of the North Parking Garage. This landscaping provision, therefore, remains satisfied.

- (b) Safe sight distances free of any obstruction shall be provided at all entrances and exits to public roads. Ample safe sight distances clear of any building or other artificial or natural obstructions shall be provided at the corner of intersecting public roads.*

The increase in walking distance to 560 feet is due to the relocation of the North Parking Garage, which in turn shifts the entrance/exit serving the garage to the north approximately 40 feet. The new entrance/exit location is in excess of 280 feet from the driveway across Plum Orchard Drive to the north, which provides sufficient sight distance. The shift in the entrance/exit centers the driveway midway between the two driveways on the opposite side of Plum Orchard Drive. This sight distance provision continues to be satisfied.

(c) Effective channelization and division of parking areas within the interior of a parking facility shall be provided for both pedestrian and vehicular traffic. This may be accomplished by use of landscaped areas with trees, walls, fences, other natural growths or artificial features, raised curbs, marked directional lanes and controls, change of grade or other devices to mark points of turn, to separate parking areas and to control traffic movement.

The shift in the location of the North Parking Garage has no impact on the channelization and division of the parking areas included within this garage. Thus, this provision will continue to be satisfied.

(d) Parking facilities containing 500 or more parking spaces shall be divided into several smaller parking areas and shall be separated from each other by landscaping, change of grades, buildings or other natural or artificial means.

The North Parking Garage includes in excess of 500 parking spaces. These parking spaces are divided into six separate parking levels, which will not be affected by a shift in the location of the garage. The provision continues to be satisfied.

(e) Each parking facility shall be designed individually with reference to the size, street pattern, adjacent properties, buildings and other improvements in the general neighborhood, number of cars to be accommodated, hours of operation and kinds of use.

The North Parking Garage has been designed and located to respect the Site topography and wetland features, as well as adjacent proposed uses and the street that provides access for the garage. The entrance/exit along the north side of the garage will continue to serve the lower level staff parking area, while the drive to the rear of MOB 2 will serve tenants and visitors, and provide a turn-around for emergency vehicles. Shifting the building northward and extending the walking distance to 560 feet will not affect the satisfaction of this provision.

In conclusion, the requested waiver may and should be granted because the proposed relocation of the North Parking Garage does not negatively impact the objectives of Section 59-E-4.2. Moreover, the relocation otherwise provides a more desirable location for the North Parking Garage and a better pathway connection between this garage and the Main Building.

There was no evidence contrary to Petitioner's presentation regarding the parking waiver issue, and the Hearing Examiner agrees with Technical Staff's finding that the requested parking waiver is amply justified by this record.

5. Landscaping, Lighting and Signage:

Petitioner's concept for landscaping was presented at the hearing by its landscape architect, Trini Rodriguez (Tr. 116-139). Her firm was "charged with creating a very unique facility" to incorporate "the healing benefits of nature," which are possible on this site. Tr. 120. The goal overall was to ease the hospital users' stress, anxiety and fear. Ms. Rodriguez described her plans as having interwoven the concepts of "sustainability" and "environmental design" to achieve these goals. Tr. 120. The landscape was intended as a unifying component, with the lake and the wooded areas being major elements of that unifying environment, as shown in the overall landscape plan, Exhibit 141.



Ms. Rodrigues testified that the site is broken down into landscape districts, which are shown below in Exhibit 146, and described in detail in the “Amended and Restated Landscape Architecture Report” (Exhibit 101(uuu)). The Districts include: (1) the Main Building and Ambulatory Care District, (2) the Emergency Entrance District, (3) the Pedestrian Link District, (4) the Lake Overlook Terraces District, (5a) the MOB 1 and South Parking Garage District, (5b) the MOB 2 and North Parking Garage District, and (6) the Lake District.



Other exhibits show the landscaping in each of these districts. Exhibit 147 illustrates the main building and ambulatory care entrances; Exhibit 148 shows the pedestrian link by which users of the hospital, after they park their vehicles, connect to the main facility; Exhibit 149 illustrates

landscaping for the MOB's and parking garages; and Exhibits 150 and 151 illustrate the healing gardens and the lake.

As Ms. Rodrigues pointed out, landscape serves different purposes, announcing the entrances but also providing screening of the loading areas. There are also terraces which overlook the lake and pedestrian connections, with the idea that the healing gardens have a very strong therapeutic effect on the patients. She described them as being designed to stimulate all the senses, with varied textures, and trees and plant materials of different fragrances. The lake is much lower than the main level of the hospital, so there will be a series of ramps down to the lake and a path that articulates around the lake, winds its way through the edge of the lake, and through the woods. There is a proposal for a fitness trail and a picnic area that can be used by patients or special events, and by staff as well as visitors.

Finally, Ms. Rodrigues testified that the landscaping will be in conformance with the standards of the I-3 and I-1 Zones and Zoning Ordinance Sections 59-G-1.21 and G-2.31, and that there would be no non-inherent effects or adverse impacts from the hospital use at this location. Tr. 136-139.

Technical Staff did not say a great deal about landscaping, but did conclude, "The applicant's architectural plan provides for ample green area and extensive landscaping throughout the Hospital Campus." Exhibit 102, p. 15. Also, in finding that the hospital will be in harmony with the neighborhood, Technical Staff noted, "The site and landscape plans provide for extensive landscaping, generous size of green space (73 %) and sufficient building setbacks." Exhibit 102, p. 35. Staff's final finding with regard to landscaping was made in conjunction with its conclusion that there will be sufficient buffering of adverse effects such as noise and light: "Moreover, screening

and buffering is proposed in the form of landscaping and forest conservation easements.” Exhibit 102, p. 36.

The Hearing Examiner finds that there is ample evidence that Petitioner’s landscaping plan for the hospital will create an attractive campus, make use of natural features on the site, provide appropriate screening and create a good atmosphere for patients and their visitors, without adverse visual impacts on the neighbors.

Ms. Rodrigues described lighting for the facility as providing enough lighting for safety in and around both buildings and grounds, but at the same time, it will be at a low level and will not spill over into bordering properties. Tr. 135. Mr. Rawlings noted that the South Parking Garage “will also give us a nice light barrier. We’re going to be applying for LEED certification sustainability for this hospital. One of the requirements is lighting levels.” Tr. 108. The lighting plans, which include photometric studies (Exhibits 101(mm) and (nn)), confirm this testimony, showing no significant light spillage into adjacent areas. Zoning Ordinance §59-G-1.23(h), which limits light spillage into adjacent residential areas to 0.1 footcandles, does not apply because the subject site is neither in, nor adjacent to, any residential zones. Nevertheless, the photometric studies appear to show 0.1 footcandles or less at the property lines. The notes from Exhibit 101(mm), identifying the fixtures and specifying illuminance levels, are shown below:

- 
 SELUX SATURN SERIES (#SAC-R2)
 15' POLE - 150W MH (QTY: 34)
- 
 SELUX SATURN SERIES (#SAC-R2)
 12' POLE - 70W MH (QTY: 21)
- 
 SELUX SATURN BOLLARD (#SAB)
 3' MOUNTING HEIGHT - 70W MH (QTY: 53)
- 
 SELUX STRADEx 500 (#STR5-R2)
 18' POLE - 175W MH (QTY: 13)

ILLUMINANCE LEVELS (FC)					
AREA	Avg	Max	Min	Avg/Min	Max/Min
Roadways/Parking	1.4	7.5	0.0	0.0	0.0
Walkways	2.0	15.0	0.0	0.0	0.0

Technical Staff's conclusion regarding the impact of site lighting levels upon the neighbors is contained in their report (Exhibit 102, p. 36):

The hospital buildings are substantially distanced and separated by other non residential uses from the nearest residential uses. Moreover, screening and buffering is proposed in the form of landscaping and forest conservation easements. Given the prevailing characteristics of the development and uses surrounding the site, it is not anticipated that the use would cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone. [Emphasis added]

Based on this record, the Hearing Examiner finds that lighting will be adequate for the facility, but will not produce inappropriate spillover or glare into neighboring properties.

The final item in this section concerns signage. The Signage Plan (Exhibit 144), reproduced below, shows the locations of proposed signs for the site.

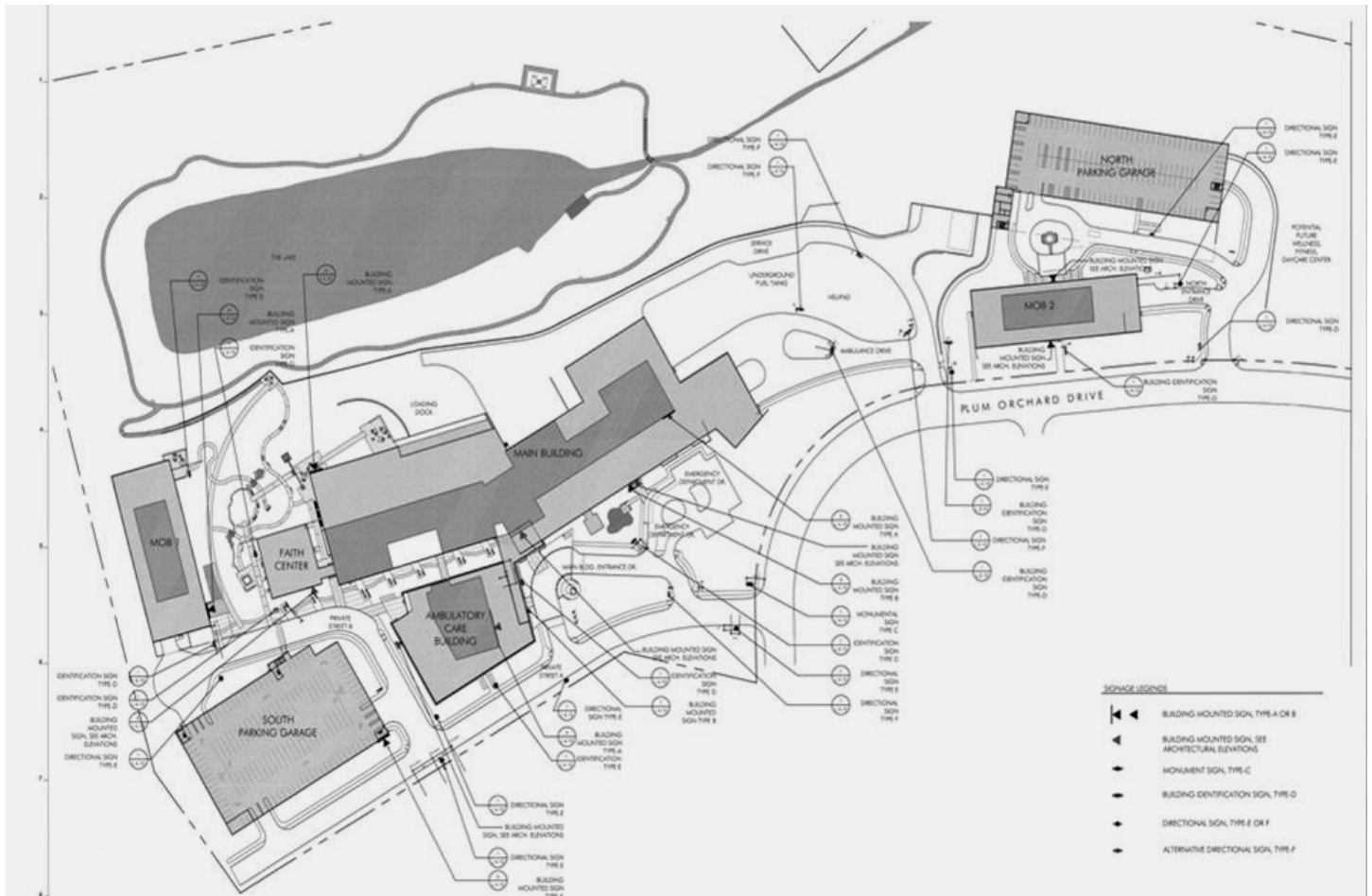
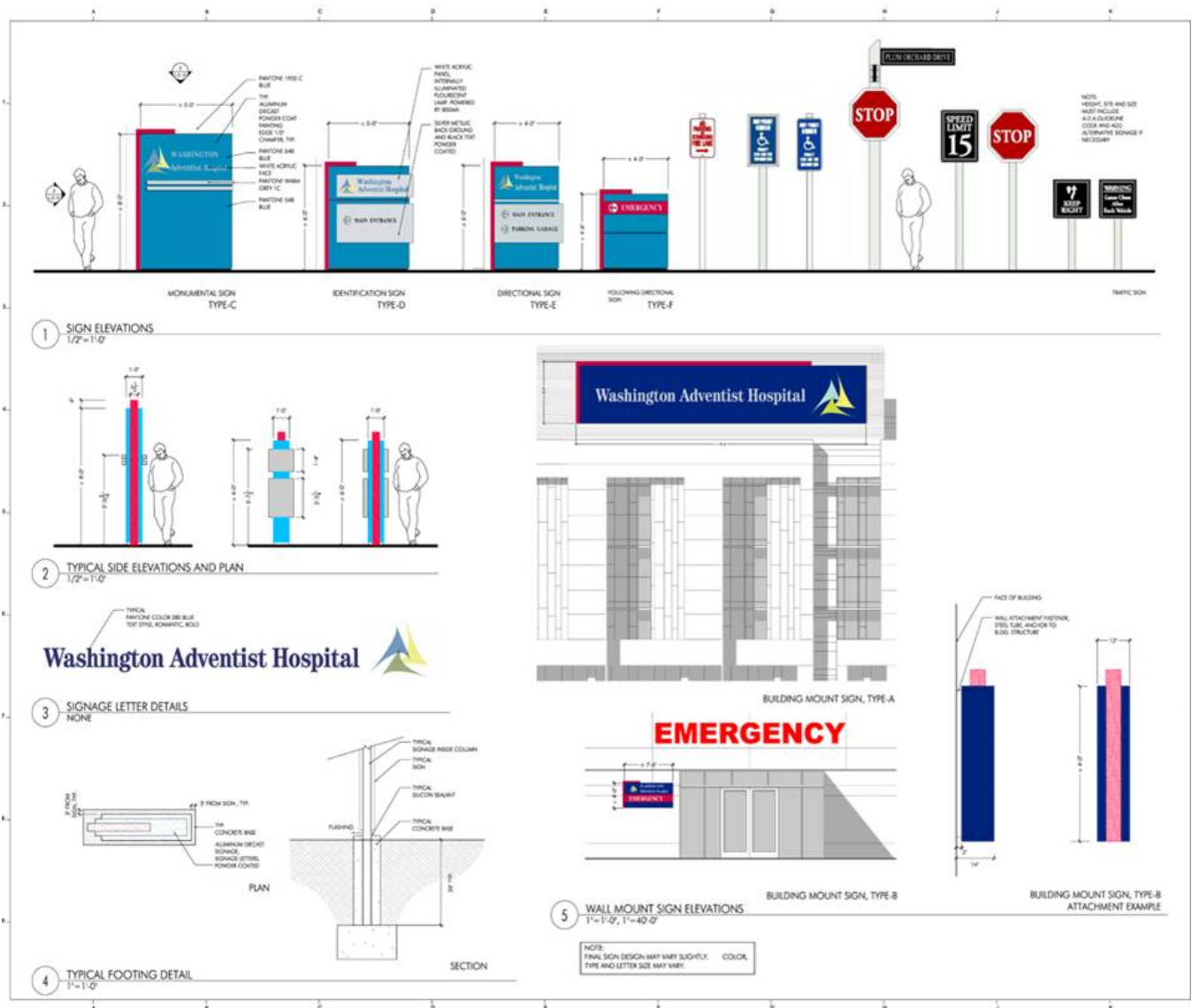


Exhibit 146 sets out the details of the various signs:



Technical Staff noted (Exhibit 102, p. 28):

Several signs, including freestanding, building, and directional signs are proposed. Any sign, including temporary construction signs must comply with all applicable requirements of Article 59-F. All signs placed on the property must meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area and Section 59-F-4.1 (e) regarding illumination.

A condition has been recommended requiring Petitioner to comply with Article 59-F, to obtain permits for all signs and to file copies of all sign permits, with the Board of Appeals, prior to posting. Petitioner's counsel, William Kominers, agreed to do so. Tr. 126.

6. Environment and the Forest Conservation Plan:

The 48.86-acre property consists of approximately 64% forest (31.22 acres), 29% non-forested/open land, and 7% open water/stream. Exhibit 101(sss). The site is not in a special protection area. Exhibit 102, p. 26. Petitioner's NRI/FSDs for the site were approved by M-NCPPC on July 18, 2007 (420030710) and November 1, 2007 (4-07302), Exhibits 6(a) and (b). The Planning Board approved Petitioner's Preliminary Forest Conservation Plan (PFCP) for the site (Exhibits 101(h) through (n)), with conditions, on April 24, 2008. Exhibit 169. The PFCP was updated and clarified in post-hearing filings (Exhibits 161(f) through (j)). Petitioner's Stormwater Management Concept Plan was approved by DPS on January 28, 2008 (Exhibit 154). It was updated again on April 7, 2008, and the latest version is in the record as Exhibits 101(o) through 101(y).

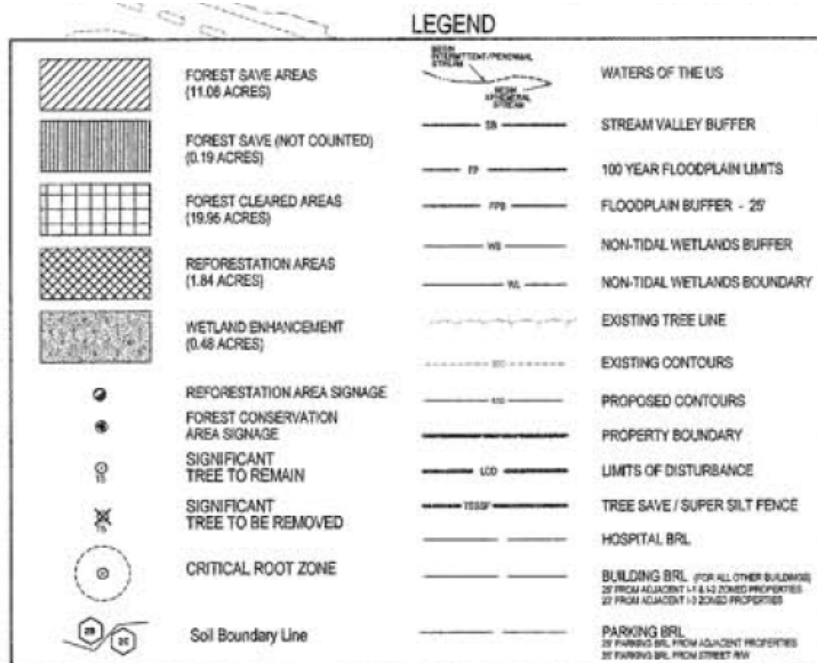
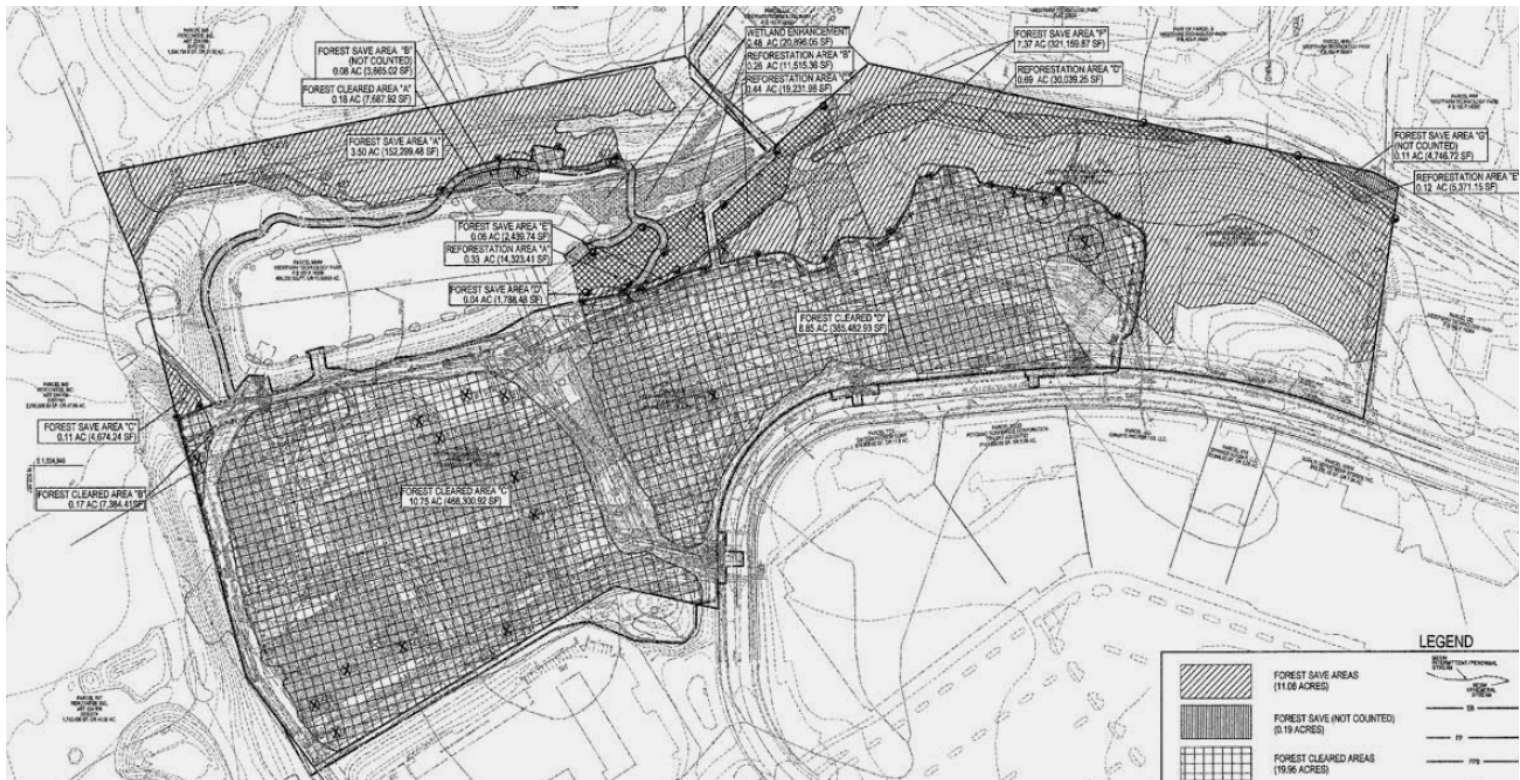
Petitioner's evidence at the hearing stressed its effort to obtain LEED certification, which will require environmentally sensitive site planning. Tr. 108, 120. They also produced testimony from an environmental scientist, Andrew Der, who confirmed the analysis as set forth in the Amended Environmental Report (Exhibit 101(sss)) and opined that the proposed special exception satisfies the criteria of Zoning Ordinance §§59-G-1.21 and G-2.31 and will not produce adverse impacts on the environment. Tr. 209-218. "In fact, it complies with all the requirements and even exceeds them in many ways by vegetative enhancement and additional plantings." Tr. 217. In his opinion, the development complies with applicable forest conservation and environmental laws and is very proactive in retaining the natural resources area.

Technical Staff reported that Petitioner's initial submission proposed approximately half an

acre of encroachment into an environmental buffer area that includes a forested wetland. As noted earlier in this report, Petitioner agreed to relocate its North Parking Garage to avoid that intrusion, which satisfied Technical Staff. Exhibit 102, p. 22.

Forest Conservation:

The Preliminary Composite Forest Conservation Plan (Exhibit 161(f)) is reproduced below:



It was explained in the Amended Environmental Report (Exhibit 101(sss), p. 2):

The Montgomery County Forest Conservation Law (Chapter 22A of the County Code) requires the retention of a percentage of forest on a proposed development. The amount of forest retention required is dependent on the zoning and the amount of existing forest on a site. In addition to the forest retention requirement, reforestation is required to offset any reduction in forest area on a site. The amount of reforestation required is dependent upon on the area of forest to be cleared, in relation to the area of existing forest. M-NCPPC has developed a forest conservation worksheet to calculate the forest retention and reforestation requirements for development sites.

As stated above, the 48.86-acre Property has 31.22 acres of existing forest. For a commercial land development project (*i.e.*, the Hospital) in the I-1 and I-3 zones, the forest conservation threshold is 15% of the net tract area. Thus, the forest conservation threshold for the Property is 7.33 acres. For every acre cleared above the forest conservation threshold requirements, $\frac{1}{4}$ acre of forest must be replanted. For every acre of forest cleared below the forest conservation threshold, two acres of forest must be replanted. A credit is given for every acre of forest above the conservation threshold retained on the development site. Applying these criteria to the Hospital, 19.11 acres of forest could be cleared on the Property without replanting any forest. This number is referred to as the “break even point,” where the forest area retained above the conservation requirement offsets replanting requirements for proposed forest clearing.

The proposed Hospital development will result in the clearing of 20.97 acres of forest. As this exceeds the 19.11-acre “break even point,” there is a reforestation requirement of 2.32 acres, which may easily be achieved on the Property. A total of 2.59 acres of existing non-forested, open land is available within the Property to meet the reforestation requirement. Of this area, 1.76 acres lie within a stream valley or other environmental buffer, which are considered priority areas for reforestation. WAH will work with M-NCPPC to determine the appropriate reforestation area.

When the Planning Board approved Petitioner’s Preliminary Forest Conservation Plan for the site, it imposed the following conditions (Exhibit 169):

1. Revise the PFCP to include the following:
 - a. Avoid disturbance of environmental buffers, including wetlands. Revisions must be consistent with the two revised site plans (entitled “North Parking Garage and MOB2 Plan Revision” and “Main Hospital Entry Site Plan Revision”) and alternate waterline plan (entitled “Alternate Waterline

Location Plan”).

- b. Show proposed limits of disturbance that avoid environmental buffers and that are realistically located with respect to proposed structures.
2. Category I conservation easement must be placed over forest retention areas, forest planting areas, and that portion of the environmental buffer that does not include a County stormwater management easement.
3. Category I conservation easement must be shown on record plats.

Those conditions are recommended by the Hearing Examiner in Part V of this report, and a Final Forest Conservation Plan will be reviewed by the Planning Board at Site Plan Review.

Stormwater Management:

Petitioner’s civil engineer, Daniel Pino, testified that he prepared the storm water management plan and sediment control plans for the site. He confirmed his analysis and findings, as set forth in the Amended Civil Engineering Report (Exhibit 101(ttt)). Tr. 191-208. As mentioned above, Petitioner’s Stormwater Management Concept Plan was approved by Montgomery County Department of Permitting Services, on January 28, 2008 (Exhibit 154).

Environmental Planning Staff discussed stormwater management in a memo dated March 31, 2008, which is attached to the Technical Staff report (Exhibit 102) and quoted in part on page 22 of that report:

Conceptual stormwater management approval was granted by DPS in a letter dated January 28, 2008. The existing in-stream stormwater management pond will receive most of the site’s runoff and provide quantity control for the site. Water quality control structures are required on the site and these are proposed in the form of a series of underground storm filters. Several of DPS’ conditions of the concept approval include the following:

- Onsite recharge is not required due to the proximity of the project site to the existing retention pond.
- All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material
- All covered parking areas must drain to the sanitary sewer system. Covered parking areas will not be allowed to drain to the storm drain system.

- Rooftop runoff must be directed to the regional pond, bypassing on-site storm drainage, wherever possible.
- Environmental Planning staff has concerns for the lack of groundwater recharge provisions through infiltration in relation to the wetland area on an upland slope nearby the proposed northern-most parking deck structure. If infiltration is not provided at this location, the natural recharge function of the slope where the wetlands are located may be eliminated and the wetland may dry up.

The site is in the Paint Branch watershed, which is designated by the state as Use III waters (natural trout waters). Because Department of Permitting Services (DPS) is requiring the two proposed covered parking garages must drain the runoff into the sanitary sewer system, this will protect the watershed's water quality so stormwater runoff from the garage structures is not discharged untreated directly into the site's in-stream stormwater management facility.

Environmental Planning Staff recommended two conditions to address their concerns, which will be included in the conditions recommended in Part V of this report:

1. Revise all plans for the special exception to avoid disturbance of environmental buffers, including wetlands. Revisions should be consistent with the two revised site plans and waterline alignment plan (entitled "North Parking Garage and MOB2 Plan Revision" and "Main Hospital Entry Site Plan Revision" and the "Alternate Waterline Alignment" plan received March 27, 2008).
2. Coordinate with MNCPPC and County DPS to implement measures to maintain water flow to the forested wetland and its buffer near the northern parking garage. Cleaner water discharges from rooftops, green roofs, etc., should be examined to replace surface and groundwater flows lost to upstream development.

Green Buildings:

Finally, Environmental Planning Staff specified that Petitioner "must comply with Montgomery County green building requirements." Exhibit 102, p. 23. Petitioner commits to that condition in its Amended Architectural Report (Exhibit 101(qqq), and it has been recommended in Part V of this report.

Technical Staff concluded that "There are no unacceptable traffic, circulation, noise or environmental impacts associated with the application provided that the recommended conditions are satisfied." Exhibit 102, p. 43. Staff also noted that "The setting of the hospital in the area,

adequately distanced from the residential properties with the presence of stream, wetlands, 100-year floodplain, and steep slopes, effectuated an environmentally sensitive and aesthetically appealing design of the Hospital Campus.” Exhibit 102, p. 35.

Based on this record, the Hearing Examiner finds that the proposed development, as conditioned, will not be harmful to the environment.

D. Adequacy of Public Facilities

1. Who Does the APFO Review, the Planning Board or the Board of Appeals?:

The public facilities review in this case is in an unusual posture. The governmental agency with responsibility for reviewing the adequacy of public facilities in a special exception case is determined by Zoning Ordinance §59-G-1.21(a)(9)(A) and (B):

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Ordinarily, this standard is not hard to apply; if a preliminary plan of subdivision is required after action by the Board of Appeals on the special exception petition, the adequacy of public facilities review will be made by the Planning Board, and if a preliminary plan of subdivision is not needed, that determination is made by the Board of Appeals. The subject case is unusual because,

on April 24, 2008, just 11 days before the special exception hearing, the Planning Board approved an extension of APF approvals until July 25, 2013 for the proposed use on this site,¹⁶ as evidence by Technical Staff's revised letter of May 16, 2008 (Exhibit 162(a)). At the hearing, Petitioner's attorney, Robert Brewer, argued that "the Planning Board's finding of the adequacies of public facilities . . . on April 24th, [2008] is a complete answer to the subdivision question . . ." Tr. 183. In other words, Petitioner argues that subsection 59-G-1.21(a)(9)(A) applies, not (B) – that it is the Planning Board which determines the adequacy of public facilities in this case, not the Board of Appeals, and the fact that the Planning Board's determination was made prior to the special exception review is immaterial.

The Hearing Examiner recognizes that Petitioner's view might offer a common-sense resolution in this case. The Planning Board has the staff with expertise in this area, and both the Technical Staff and the Planning Board reviewed Petitioner's proposal and recently determined that public facilities were adequate, at least until 2013. Exhibits 102 and 162(a). On the other hand, the timing specified in the above-quoted statute sets a clear before/after dichotomy – if the special exception approval takes place before a required a preliminary plan of subdivision, the Planning Board determines APF; if after (*i.e.*, if no future preliminary plan of subdivision is required), then it is the Board of Appeals which must determine APF. The Hearing Examiner does not feel free to ignore this unambiguous statutory mandate. The applicable rule of statutory construction was set forth by the Maryland Court of Appeals in *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006),

Our goal is to ascertain and implement the legislative intent, and, if that intent is clear from the language of the statute, giving that language its plain and ordinary meaning, we need go no further. We do not stretch

¹⁶ Preliminary Plan No. 19820680 for Parcels BB and CC; Preliminary Plan No. 119910390 for Parcels RR and SS; and Preliminary Plan No. 119910380 for Parcel MMM.

the language used by the Legislature in order to create an ambiguity where none would otherwise exist. If there is some ambiguity in the language of the statute, either inherently or in a particular application, we may then resort to other indicia to determine the likely legislative intent. [Citations omitted.]

While one could argue that the language of the statute is ambiguous when applied to this particular matter, the Hearing Examiner believes that the safer course is to apply the language of the statute literally, but to treat the findings, analysis and recommendations of the Planning Board in this case as establishing a rebuttable presumption that the Planning Board's APF determination is correct.

It must be remembered that the adequacy of the transportation facilities in this case is linked to an extensive set of road-improvement recommendations made by the Planning Board (Exhibit 124(a)), some of which were not entirely consistent with recommendations later made by DPWT (now DOT) in its June 4, 2008 review (Exhibit 167). At the request of the Hearing Examiner (Order of July 2, 2008, Exhibit 168), Technical Staff and DOT have now worked out a unified set of transportation-related recommendations (Letter of August 5, 2008, Exhibit 176), which the Hearing Examiner accepts.¹⁷ Approval of the adequacy of the transportation facilities by the Board of Appeals in this case thus takes into account recommendations made after the Planning Board's APF approval, as well as testimony at the special exception hearing which took place after the Planning

¹⁷ The joint letter from DOT and Technical Staff setting out recommended APF conditions for the special exception (Exhibit 176) was signed by Rose Krasnow, Chief of M-NCPPC's Development Review Division and Gregory M. Leck, Manager of DOT's Development Review Team for the Division of Traffic Engineering & Operations. The opening paragraph of the August 5 letter contains the following caveat:

Please understand that Planning Board staff do not have the authority to amend Planning Board-recommended conditions without the Board's approval. However, within County-maintained rights-of-way, safety and operations, as well as related improvements, fall under the jurisdiction of the Executive Branch. This letter endeavors to preserve the intent of the Planning Board-recommended approval conditions, while merging them with the Department of Transportation's operational recommendations.

The Hearing Examiner finds that this unified recommendation, which incorporates the essentials of the Planning Board's recommendations and DOT's recommendations, is the unrebutted evidence in this case of the best conditions for the Board of Appeals to apply in making its APF finding.

Board acted. There has been no evidence to rebut the Planning Board's finding of the adequacy of public facilities in this case, although some of the conditions they recommended at the time of approval have been modified to take into account DOT concerns. As stated in the joint DOT/M-NCPPC letter of August 5, 2008, "the intent of the Planning Board-recommended approval conditions" has been preserved. Exhibit 176, p. 1. The unified recommendations of Technical Staff and DOT have been incorporated into recommended conditions in Part V of this report.

2. Transportation Facilities:

a. Local Area Transportation Review (LATR):

Petitioner's transportation planner, Wes Guckert, did a Local Area Transportation Review (LATR) traffic study, assessing the impact of the proposed hospital on the road system. On May 1, 2008, Mr. Guckert prepared, at the request of Staff, a consolidated traffic study, representing a compilation of his findings, analyses and recommended improvements. It was introduced as Exhibit 152, and that integrated traffic study was discussed in his testimony at the hearing (Tr. 143-192). It was further amended after the hearing by Exhibit 161(d)).

Mr. Guckert assessed traffic volume at intersections near the subject site, made traffic projections regarding the new hospital, determined impact of the proposed hospital and made recommendations for road improvements. Many of Mr. Guckert's recommended improvements became conditions of approval that the Technical Staff recommended and the Planning Board approved at its hearing on April 24, 2008.

Mr. Guckert calculated morning and evening, peak-hour, trip generation rates for the proposed hospital and compared them to trip generation rates for the general office use previously approved by the Planning Board for the subject site. Exhibit 152, p. 17. His findings regarding hospital generated peak-hour trips are displayed in a simple table in the Technical Staff report (Exhibit 102, p. 20):

TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED 803,570 SF REPLACEMENT HOSPITAL AT WEST*FARM
WASHINGTON ADVENTIST HOSPITAL

Trip Generation	In	Out	Total
Morning Peak-Hour	646	318	964
Evening Peak-Hour	313	635	948

Trip Generation based on ITE LUC 610 Hospital. Independent Variable: Trips per 1,000 SF GFA.

Source: The Traffic Group, Inc. Traffic Report; November 30, 2007.

These figures, showing 964 morning peak-hour trips and 948 evening peak-hour trips that would be generated by the 803,570 square foot proposed hospital, are substantially lower than the projected trips for the 802,619 square feet of previously approved office use. If the entire 802,619 square-feet of office density previously approved for the site were to be built as office space, that use would generate 1341 trips in the morning peak hour and 1216 trips in the evening peak hour. Exhibit 102, p. 20. However, in order to get an extension by the Planning Board of the previous APF approvals, Montgomery County Code §50-20(c)(9)(B) requires that the applicant not exceed the trip generation associated with 10% less development than was previously approved. Since the prior approval anticipated a development of up to 802,619 square feet of office space, Technical Staff looked at the number of trips which would be generated by an office development 10% (80,262 square feet) smaller.

Staff found that the resulting 722,357 square feet (*i.e.*, 802,619 – 80,262) of office density would generate approximately 1,212 total peak-hour vehicle trips during the weekday morning peak-period and 1,080 total peak-hour vehicle trips during the weekday evening peak-period, using *LATR Guidelines* trip generation rates. These trip generation figures thus became the new trip generation

cap for the combined parcels as approved by the Planning Board when it voted on April 24, 2008, to extend the APF approvals for this site until July 25, 2013. Exhibit 102, p. 20 and 162(a).

Nevertheless, the number of trips that are projected to be generated by the proposed 803,570 square-foot hospital is still well below the trip generation cap. As observed by Technical Staff (Exhibit 102, p. 20), the proposed hospital will generate 20 percent fewer morning peak-hour trips and 12 percent fewer evening peak-hour trips than would have been generated by 722,357 square feet of office density. In sum, there will be much less peak-hour traffic from the hospital development than there would have been under the originally approved development. Tr. 156-157.

Mr. Guckert was asked by Technical Staff to count traffic at 16 intersections for existing conditions (Exhibit 152, p. 2):

- Fairland Road & Old Columbia Pike
- US 29 & Fairland Road
- US 29 & Musgrove Road
- Randolph Road & Serpentine Way
- Randolph Road & Old Columbia Pike
- Randolph Road & the US 29 Ramps
- Cherry Hill Road & Prosperity Drive
- Cherry Hill Road & Broadbirch Road
- Cherry Hill Road & Plum Orchard Drive
- US 29 & Tech Road
- Broadbirch Drive & Tech Road
- Broadbirch Drive & Plum Orchard Road
- Calverton Boulevard & Galway Drive
- US 29 & Industrial Parkway
- US 29 & Stewart Lane
- Plum Orchard Drive & the Site Access

Staff furnished background traffic information about approved, but as yet un-built, projects, and those background counts were adjusted by Technical Staff to account for the Inter-county Connector, which is under construction, and FDA traffic. The critical lane volume (CLV) was then calculated at each intersection and at the proposed hospital access points. The results of this analysis are summarized in tables in Mr. Guckert's consolidated report, Exhibit 152, pp. 26-27.

Technical Staff reviewed Mr. Guckert's analysis and focused on the impact of hospital traffic at three critical intersections along Cherry Hill Road and two intersections along Broad Birch Drive within West*Farm. These include the Cherry Hill Road intersections with Prosperity Drive, Broad Birch Drive/Calverton Boulevard, and Plum Orchard Drive/Clover Patch Drive, and the Broad Birch Drive intersections with Plum Orchard Drive and Tech Road. A summary of the Critical Lane Volume (CLV) analysis for the weekday morning and evening peak hours at the five intersections listed above is provided in Table 2 (Exhibit 102, pp. 20-21):

TABLE 2
SUMMARY OF CAPACITY CALCULATIONS
PROPOSED 803,570 SF REPLACEMENT HOSPITAL AT WEST*FARM
WASHINGTON ADVENTIST HOSPITAL

Intersections	Traffic Conditions							
	Existing		Background ¹		Total		Total w/ Improvements	
	AM	PM	AM	PM	AM	PM	AM	PM
Cherry Hill Rd/Prosperity Dr	1,019	1,011	1,132	1,138	1,338	1,340	--	--
Cherry Hill Rd/Broad Birch Dr/ Calverton Blvd	1,498	1,462	1,919	1,745	2,247	1,871	1,575	1,540
Cherry Hill Rd/Plum Orchard Dr/ Clover Path Dr	1,135	1,052	1,223	1,149	1,577	1,363	1,195	1,216
Broad Birch Dr/Plum Orchard Dr	629	751	891	1,039	1,045	1,321	873	1,169
Broad Birch Dr/Tech Rd	716	890	1,303	1,309	1,380	1,385	1,145	1,256

Source: The Traffic Group, Inc. Traffic Report; November 30, 2007; Supplemental Analysis, March 10, 2008; Staff Analysis.

2004 LATR Guidelines Congestion Standard for Fairland/White Oak Policy Area: 1,500.

¹ Includes 1,170 additional employees proposed for study in the 2008 Supplemental EIS at the Consolidated Headquarters Campus for FDA at White Oak.

Based on the analysis, Technical Staff determined that intersection improvements are required at four of the five intersections, as indicated in the above Table 2. Some intersections are over the congestion standard for the area, but Mr. Guckert indicated that was acceptable because the intersection improvements will reduce the critical lane volumes below the background level at all the critical intersections where the CLV currently exceeds the congestion standard, as shown in Table 2, above. Therefore, the hospital will not be making the situation any worse, and the petition satisfies all requirements.

Technical Staff concluded:

With the improvements reflected in the special exception approval conditions, which includes installation of several non-auto transportation facilities in the vicinity of the proposed hospital to enhance non-auto accessibility to the hospital, staff finds that the proposed hospital will be adequately served by public facilities and will not reduce safety of vehicular or pedestrian traffic. [Exhibit 102, p. 20]

b. Specific Improvements and other Transportation Related Conditions:

The required improvements and other APF related conditions are set forth in the unified recommendations of Technical Staff and DOT (Exhibit 176). They are listed below and have been incorporated into recommended conditions in Part V of this report. The improvements include, *inter alia*, a Transportation Management Program (TMP), a multi-bus pull-off facility, traffic signals, pedestrian countdown/APS signals, turn lanes, an employee shuttle, bike lockers and bike racks. To ensure adequacy of public facilities, Petitioner must satisfy the following conditions:

- a. Limit development on the property as part of this special exception and future Site Plan for the property to a total built density of 803,570 square-feet, including a main hospital building, an ambulatory care building, a faith center, two medical office buildings, two parking structures, and a helipad. No additional uses may be permitted on the property unless the special exception is modified within the APF validity period.
- b. Implement road improvements and other installations required in Conditions c, g, h, i, j and k as described in the schedule below. The Applicant must complete and submit to Montgomery County Department of Transportation (DOT) conceptual designs for the road improvements and other installations, including signal warrant studies, at least 45 days in advance of the Planning Board's public hearing on the Applicant's Site Plan.

Where possible, the Applicant may meet the provision of required turn lanes in some cases by restriping existing paving. Final design drawings for the road improvements and other installations must be submitted to all relevant permitting agencies prior to the release of building permits for the hospital. At the time of submission of completed designs to permitting agencies, the Applicant must post one or more surety or cash bonds in the amount estimated by its engineers (and approved by the Planning Board staff) that represent the cost of construction of such road improvements and other installations. Bonds must be posted with DOT or if DOT does not accept them, with the Planning Board on an interim basis to be released to the Applicant at such time as the permitting agencies accept bonds for equivalent purposes. Upon issuance of permits, the Applicant must proceed diligently with construction of the road improvements and other installation.

The Applicant must provide notice to Planning Board staff that final inspections for the use and occupancy permit have begun. Prior to the issuance of any use and occupancy permit for the hospital and/or any other on-site building, all road improvements and other installations must be substantially complete and open to traffic as determined by Planning Board staff.

- c. Prior to issuance of the building construction permit (including structural, electrical, plumbing, mechanical, etc. components) for the hospital and/or any other on-site building, the Applicant will be required to have obtained any necessary rights-of-way and/or easements, along with Executive Branch plans approval, and posted bonds for the construction drawings of improvements (including but not limited to intersection widenings, DOT-approved traffic signals, traffic control signs and markings, etc.) to be constructed within the public right-of-way.

Additionally, if any of the road improvements identified in these conditions either are now, or in the future become, obligations of other development projects, applicants of other development projects may participate on a pro-rata basis in the joint funding of such improvements. Basis of participation on a pro-rata basis is the sum of total peak hour trips generated by the subject development relevant to the particular improvement over the sum of total peak hour trips generated by all developments required by the Planning Board to participate in the construction of the particular improvement. The road improvements must include:

- i) At the Cherry Hill Road/Broad Birch Drive/Calverton Boulevard intersection:
 - o Provide, along Cherry Hill Road, a southbound right-turn lane to westbound Broad Birch Drive.
 - o Provide, along Cherry Hill Road, a second northbound left-turn lane to westbound Broad Birch Drive.
 - o Provide, along Broad Birch Drive, improvements that result in two eastbound left turn lanes to northbound Cherry Hill Road, a through lane to eastbound Calverton Boulevard, and a right-turn lane to southbound Cherry Hill Road.
 - o Upgrade the existing traffic signal system at the intersection as necessary.

- ii) At the Cherry Hill Road/Plum Orchard Drive/Clover Patch Drive intersection:
 - Provide, along Cherry Hill Road, a southbound right-turn lane to westbound Plum Orchard Drive.
 - Provide, along Cherry Hill Road, a second northbound left-turn lane to westbound Plum Orchard Drive.
 - Upgrade the existing traffic signal system at the intersection as necessary.
- iii) At the Broad Birch Drive/Plum Orchard Drive intersection:
 - Provide a new traffic signal when warranted and approved by DOT.
 - Provide, along Broad Birch Drive, a separate eastbound right-turn lane to southbound Plum Orchard Drive.
 - Provide, along Broad Birch Drive, a separate westbound left-turn lane to southbound Plum Orchard Drive.
- iv) At the Tech Road/Broad Birch Drive intersection:
 - Provide a new traffic signal when warranted and approved by DOT.
 - Reconfigure southbound Tech Road approach to Broad Birch Drive – from a through lane and a through-left lane to provide a through-left lane (to southbound Tech Road and eastbound Broad Birch Drive) and a left-turn lane (to eastbound Broad Birch Drive).
 - Reconfigure northbound Tech Road approach to Broad Birch Drive – from a through-right lane and a through lane to provide a right-turn lane (to eastbound Broad Birch Drive) and a through lane (to northbound Tech Road).
 - Reconfigure westbound Broad Birch Drive approach to Tech Road – from a right-turn lane and a left-turn lane to provide a right-turn lane (to northbound Tech Road) and a left-right lane (to southbound Tech Road and northbound Tech Road).
- v) At the Plum Orchard Drive/proposed Southern (Main) Hospital Entrance Driveway/Private Street A:
 - Provide a new traffic signal when warranted and approved by DOT.
 - Provide, along Plum Orchard Drive, a separate northbound left-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
 - Provide along Plum Orchard Drive, a separate southbound right-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
 - Provide, along the proposed hospital driveway, separate outbound right-turn and left-turn lanes (to southbound and northbound Plum Orchard Drive respectively).
- vi) At the Plum Orchard Drive/Proposed Northern Hospital Entrance Driveway:
 - Provide, along Plum Orchard Drive, a separate northbound left-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.

- Provide, along Plum Orchard Drive, a separate southbound right-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
- Provide, along the proposed hospital driveway, separate outbound right-turn and left-turn lanes (to southbound and northbound Plum Orchard Drive respectively).

The aforementioned lane use modifications are subject to DOT approval. If DOT finds the modification(s) is not appropriate when the applicant applies for the first building construction permit, the Applicant shall prepare a cost estimate for the measures necessary to implement the modification(s), for approval by DOT. Applicant shall pay DOT the approved amount(s); DOT will be responsible for implementing the modification(s) at such time as it determines them to be operationally appropriate.

Prior to approval of the roadway construction drawings, Applicant shall provide documentation acceptable to the Executive Branch review agencies that satisfactorily demonstrates the proposed intersection improvements will be adequate to accommodate the turning movements of WB-50 trucks and emergency response vehicles. The aforementioned intersection improvements may be expanded to accommodate these turning movement requirements.

If required as a result of Executive Branch approval of the roadway construction (and/or related Signs and Markings Plan), Applicant shall restripe Plum Orchard Road. Applicant shall also construct pedestrian refuge islands if approved under that review.

Applicant will be required to relocate any existing underground utilities, at its sole expense, if the those utilities will be located within the proposed widened roadway pavement or in conflict with the relocated enclosed storm drain system.

- d. Provide hospital-oriented employee shuttle(s) for main shift employees to and from the Metrorail system for a total of 10 years from the date the hospital opens to the public or until an earlier date if the Planning Board determines that area public transit service adequately meets the needs of these employees. The details of the shuttle operation (routes, locations, headways, etc.) must be determined at the time of Site Plan. Logistics related to the operation of the employee shuttle(s) must be in place prior to release of the first occupancy permit for the hospital and/or any other on-site building. The employee shuttle service must start operation at least a week prior to formal opening of the proposed hospital.
- e. The applicant shall submit a Memorandum of Understanding (MOU) to implement a Transportation Management Program (TMP) for the proposed hospital at the time of Site Plan. The applicant, the Maryland-National Capital Park and Planning Commission and the Department of Transportation shall each be signatory parties on the MOU for the TMP for this project. The MOU and the TMP must be finalized and entered into prior to the release of building permits for the proposed hospital and/or any other on-site building.

The TMP must designate a Transportation Coordinator at the hospital. The TMP must also include a periodic reporting mechanism such as a semi-annual performance review of the program by DOT or the Planning Board staff, as well as periodic reports to a Community Liaison Committee that may include members of the local community, area businesses and institutions, and Citizen Advisory Committees. In addition, the program must consider transit subsidies to employees, establishment of creative transportation accessibility options for employees, patients and visitors, installation of transportation/transit information display areas or kiosks in prominent locations throughout the hospital for employees, patients and visitors, and joint operation of local non-employee circulator shuttles in the area with other businesses/uses.

- f. Provide adequate internal connecting roadways, sidewalks, handicapped ramps and crosswalks to ensure safe and efficient vehicular/pedestrian connections. The applicant must submit a vehicular/non-vehicular circulation plan for the campus at the time of Site Plan for review by Transportation Planning staff, DOT, and the Montgomery County Department of Permitting Services (DPS).
- g. Construct a multi-bus pulloff facility(s) with canopy structure(s) in the vicinity of the hospital site. This is in lieu of the Planning Board's recommendations set forth in Section 5(g-j) of the Planning Board Recommendations for various bus shelters in the vicinity of the hospital. The location and conceptual design details for the facility(s) shall be resolved at the Site Plan stage. To the extent the multi-bus pulloff facility(s) is not equivalent to the Planning Board's recommendations, the Applicant will provide additional bus shelters or other equivalent amenity. These equivalency issues will be resolved at the time of Site Plan.
- h. Provide, with approval from DOT, pedestrian countdown/APS signals at the Cherry Hill Road intersections with Broad Birch Drive/Calverton Boulevard and Plum Orchard Drive/Clover Patch Drive. The pedestrian countdown/APS signals must be installed at these intersections under permit in conjunction with the aforementioned intersection improvements. In the event the pedestrian countdown/APS signals are not approved by DOT, the applicant may substitute these with other available non-auto facilities of equivalent or greater mitigation value.
- i. Provide, with approval from DOT, pedestrian countdown/APS signals at the Plum Orchard Drive intersection with the proposed Southern Hospital Entrance Driveway/Private Street A (main hospital entrance) if the proposed traffic signal at this intersection is approved by DOT. The pedestrian countdown/APS signals must be installed at this intersection under permit in conjunction with the aforementioned intersection improvements. In the event the pedestrian countdown/APS signals are not approved by DOT, the applicant may substitute these with other available non-auto facilities of equivalent or greater mitigation value.
- j. Relocate any existing pedestrian countdown and accessible pedestrian signals, at Applicant's sole expense, as part of any widenings of existing signalized intersections. In the event the County has already installed pedestrian countdown and accessible

pedestrian signals at intersection(s) required of the Applicant, the Applicant obtain necessary plan approvals and posted bonds to install such signals at other nearby signalized intersection(s) prior to issuance of the building construction permit (including structural, electrical, plumbing, mechanical, etc. components) for the hospital and/or any other on-site building.

- k. Prior to issuance of the building permit for the hospital and/or any other on-site building, Applicant shall pay the County \$40,000 for the future installation of two real-time transit information signs to be installed in the vicinity of the site. Applicant will be responsible for installing the necessary equipment, conduit, electrical connections, etc. to allow the County to install one real-time transit information sign each in the hospital and in the canopy structure once that program becomes operational. Applicant to grant necessary permission to allow County staff to access and maintain the real-time transit information sign, if one is installed within the hospital as proposed.
- l. Provide bike lockers and bike racks on the hospital campus as required by the Montgomery County Code. The bike locker and bike rack locations must be determined and finalized at the time of Site Plan.

Exhibit 153 is an aerial photograph with the locations of proposed road improvements noted along Broadbirch Drive, Cherry Hill Road and Plum Orchard Drive. These improvements will be reviewed at site plan, and a condition has been recommended requiring Petitioner to seek an administrative modification of the special exception if any substantive changes are made.

c. Hospital Traffic v. School Bus Depot Traffic:

The road improvements were also discussed in connection with a concern raised in the one opposition letter about possible traffic congestion and danger resulting from the combination of hospital traffic and traffic generated by the nearby school bus depot. Exhibit 26. Mr. Guckert noted that the hospital is proposing to make improvements at three intersections along Broadbirch Drive, which is the travel route for the school buses. The school buses come out of Bournefield Way and travel east on Broadbirch to Cherry Hill Road or travel west on Broadbirch to Tech Road and then to Route 29. The school buses typically leave the depot at 6:00-6:30 AM, and they go in a direction opposite to that of hospital employees who are entering. The reverse will happen in the afternoon.

In the afternoon, the school buses will go in and out, but the hospital employees traveling because of shift changes at 7:00 AM and at 3:00 PM will generally be flowing counter to the school buses. Most of the school buses are out of the area by the time the hospital's 7:00 AM to 3:00 PM shift will be leaving. Given the fact that the busses and the hospital employees counter-flow in their operation and the fact that the hospital will be making major improvements along Broadbirch Drive, Mr. Guckert opined that the school buses, in combination with the hospital traffic, will not be a problem and will not create an adverse effect. Tr. 150-153. There is no contrary evidence, and the Hearing Examiner accepts Mr. Guckert's analysis.

d. Policy Area Mobility Review (PAMR):

During the hearing, the Hearing Examiner raised the question as to whether Policy Area Mobility Review (PAMR) requirements under the Growth Policy adopted in November of 2007 were met in this case. Tr. 182. Mr. Guckert testified that, in his opinion, PAMR does not apply in this case because the subdivision was approved prior to PAMR's adoption, and he therefore did not evaluate the impact of PAMR. When the Hearing Examiner mentioned that the special exception was filed after PAMR's adoption by the Council as part of the new Growth Policy,¹⁸ Petitioner's attorney, Robert Brewer, argued that PAMR does not apply because "the Planning Board's finding of the adequacies of public facilities . . . on April 24th, [2008] is a complete answer to the subdivision question and PAMR is merely a part of that subdivision question." Tr. 183. Another of Petitioner's attorneys, William Kominers, added that Technical Staff had concluded that PAMR does not apply

¹⁸ The Council, on February 26, 2008, adopted Zoning Text Amendment (ZTA) 07-17 (Ordinance No. 16-14, effective March 17, 2008). The Hearing Examiner takes official notice of that enactment. Under ZTA 07-17, special exceptions are required to comply with the Growth Policy in effect when the special exception application is filed. Since the application in this case was filed on December 7, 2007, and the new Growth Policy became effective on November 15, 2007, it appears that it is the new Growth Policy (including PAMR) which governs this special exception, regardless of which Growth Policy governed an earlier subdivision.

because no new trips would be generated beyond those already approved for the subdivision. In fact, fewer trips would be generated. Tr. 184.

Unfortunately, the only mention of PAMR that the Hearing Examiner could find in the Technical Staff report (Exhibit 102) was the following statement on page 13 (which originated on page 9 of the Transportation Staff's memorandum):

12. A new APF determination for the hospital under the current Growth Policy and Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines requirements could result in conditions that would make it impossible for the hospital project to go forward.

The Hearing Examiner was not sure what that statement meant, and he therefore issued an order directing Technical Staff to explain the effect of PAMR on this application. Order of July 15, 2008 (Exhibit 170). Technical Staff responded with a Memorandum dated July 30 and forwarded to the Hearing Examiner on July 31, 2008 (Exhibit 172). In that memorandum, Transportation Planning Staff clarified the meaning of Item 12, quoted above from the Technical Staff report. Staff indicated that its point was merely that, if development on the site (for an office use) had not been previously approved for a specified number of trips, then new trips generated by the proposed Special Exception petition would represent an increase in trips and would therefore require PAMR mitigation.

Staff stated that it had, in fact, applied the new Growth Policy in evaluating this special exception petition:

Staff reviewed the referenced special exception petition under the 2007-2009 Growth Policy. Under the 2007-2009 Growth Policy, the LATR and PAMR tests may be waived if the proposed use will generate fewer peak hour trips than the use that is approved for the site. In this case, the proposed special exception use will generate fewer peak hour trips than already vested on the site by virtue of the Planning Board's April 24, 2008 APF extension. Therefore staff finds that the special exception petition satisfies the APF ordinance.

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The PAMR process is applicable for all development projects reviewed under the 2007- 2009 Growth Policy. However, the Special Exception petition will not require any PAMR mitigation since the proposed use will generate fewer peak-hour trips than the use that is vested on the site. [Emphasis in original.]

The memorandum included a Table showing the net decline in projected peak-hour trips resulting from the development of the proposed hospital rather than office space on the site:

**TABLE A
TRIP GENERATION COMPARISON BETWEEN VESTED DENSITY AND
PROPOSED HOSPITAL**

Trip Generation	Morning Peak-Hour Total Trips	Evening Peak-Hour Total Trips
722,357 SF Office	1,212	1,080
803,570 SF Hospital	964	948
Difference	248	132

Based on these submissions, the Hearing Examiner is satisfied that the proposed development would comply with both LATR and PAMR under the current Growth Policy.

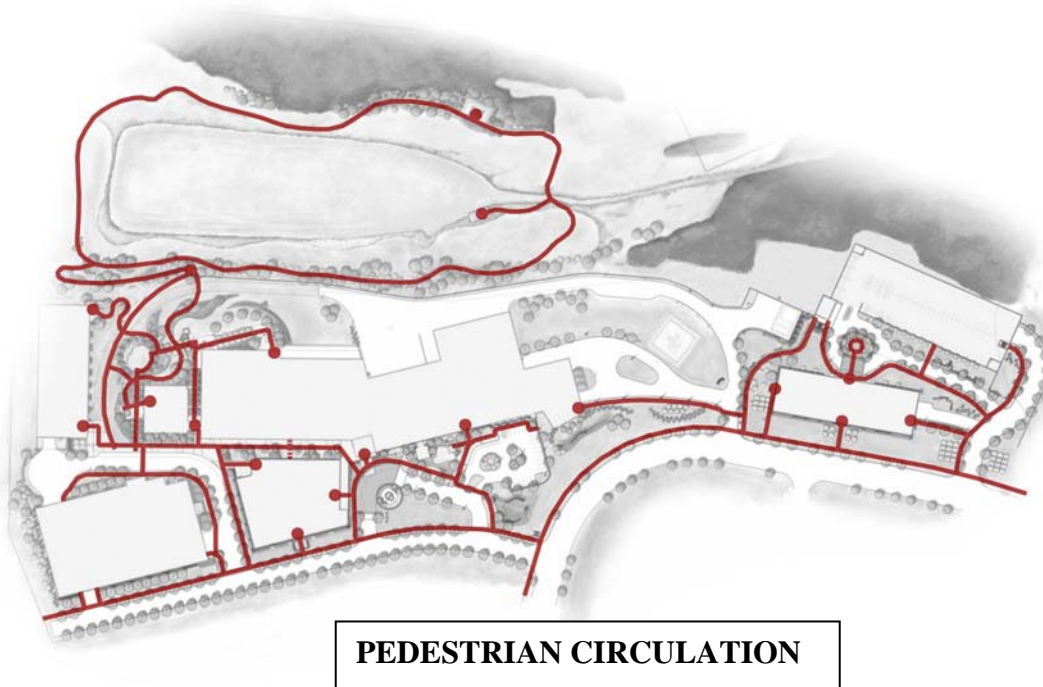
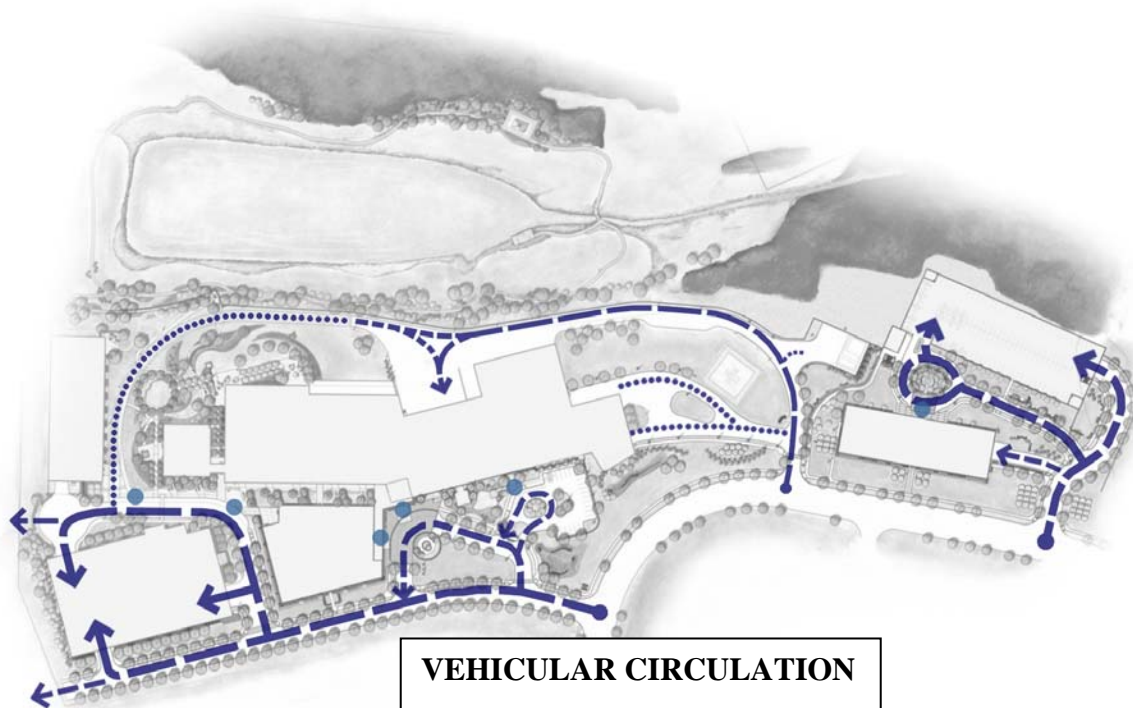
e. Internal Vehicular and Pedestrian Circulation and Safety:

Internal vehicular and pedestrian circulation within the hospital was described in Petitioner's "Amended and Restated Landscape Architecture Report" (Exhibit 101(uuu)), at pp. 12-13.

The Site circulation (both vehicular and pedestrian) clearly separates the patient/visitor movements from the emergency and service movements. Directional signage and clear hierarchy of roadway widths and material make the vehicular circulation system very identifiable and easy to navigate.

The pedestrian circulation system is composed of a connected network of paths that allows patients, visitors and staff to move throughout the Site and take advantage of the amenities offered in throughout the Campus.

Trini Rodrigues, Petitioner's expert in landscape architecture, site design, and planning, used circulation diagrams (Exhibit 142 and 143) to show the traffic and pedestrian circulation on the site, and she indicated that there are no conflicts between the two. Tr. 121-123. These circulation diagrams are shown below:



Mr. Guckert found that the internal circulation systems will efficiently channel patients, visitors and caregivers to and from the south garage and the hospital, and employees to and from the north garage and the hospital. He concluded that, with the improvements, the traffic and parking will be safe for vehicular and pedestrian traffic. Tr. 173-174. Technical Staff agreed, noting that the proposed pedestrian/bicyclist circulation concept was adequate (Exhibit 102, p. 35) and that “With the improvements reflected in the special exception approval conditions, . . . staff finds that the proposed hospital . . . will not reduce safety of vehicular or pedestrian traffic.” Exhibit 102, p. 20.

f. Compatibility of Hospital Traffic with the Community:

Finally, Mr. Guckert concluded that the general character of the neighborhood, an industrial park and a retail shopping area, is such that the traffic from the hospital will be compatible with those uses, and the hospital will be in harmony with the neighborhood. Tr. 173. Technical Staff concurred, stating (Exhibit 102, p. 34),

With the recommended conditions, the proposed use will be in harmony with the general character of the neighborhood given its location within the U S 29/Cherry Hill Road Employment area that included the Montgomery Industrial Park and The West*Farm Technology Park.

3. Non-Transportation Facilities:

Petitioner’s Amended Land Planning Report (Exhibit 101(rrr), p. 10.) indicates that public water and sewer serve the site and are adequate, as are storm drainage facilities. The property is located within two miles of the Hillandale Fire Station at 10617 New Hampshire Avenue, and the property is served by the 3rd District of the Police Department located at 801 Sligo Avenue in Silver Spring. By its nature, the use will require no school services. Technical Staff accepted this representation in reaching its conclusion that the site will be served by adequate public facilities (Exhibit 102, pp. 37-38). There is no evidence to the contrary.

E. Master Plan Compliance

The subject site is in the area covered by the Fairland Master Plan, approved and adopted in 1997. The Master Plan discusses the US 29/Cherry Hill Road Employment Area on pages 72 through 79. Its stated goals and objectives for the area are to:

Develop diversity of uses in the existing employment area to serve and support the businesses, employees, and area residents; make base zoning within the employment area compatible with employment/industrial uses; enable the US 29/Cherry Hill Road Employment Area to become diversified and self-supporting by adding compatible uses and prohibiting incompatible uses; and develop a planned reuse of the Naval Surface Warfare Center. Master Plan, pp. 76-78.

These goals were to be implemented through the creation of the US 29/Cherry Hill Road Employment Area Overlay Zone, that would allow for supportive services and retail facilities within the area to support the various businesses and industrial uses. Tr. 227. That Overlay Zone was in fact adopted by the Council (Zoning Ordinance §59-C-18.13), and the proposed hospital comports with its applicable criteria (Exhibit 102, pp. 23-24) and supports the goals of the Master Plan.

Community Based Planning Staff, in its review of the application, found the proposed development of the site with a Hospital to be “consistent with the vision and recommendation of the 1997 Approved and Adopted Fairland Master Plan.” Exhibit 159, p. 1. Staff observed that “The use will provide an important public service in an area not currently served . . . [, and t]he proposed hospital . . . is exactly the kind of regional employment generator that was envisioned in the master plan.” Exhibit 159, pp. 1-3.

Community Based Planning Staff completed its assessment of the proposed hospital by ticking off its anticipated benefits (Exhibit 159, p. 4):

- The hospital will employ thousands of highly skilled workers and professionals in an area intended for such employment uses.

- The hospital will provide all aspects of modern medical care for their existing service community as well as the larger community.
- The hospital is designed to provide immediate emergency care in a regional catastrophe. That aspect alone is in the public interest since there are few modern facilities of that type in the county or adjacent counties.
- There is synergy with existing development. Employees could avail themselves of the supermarket and other retail services within walking distance of the hospital. Attending families and visitors can also combine needed visits with errands.
- The project provides circulation to adjacent future development. The proposed layout includes an interior drive that terminates at the Percontee property. The applicant has offered to convert the drive into a public road if needed in the future. This road can only enhance the circulation in the interior of the employment area.
- The project provides passive recreational amenities. The integration of the regional storm water facility into the hospital grounds transforms a necessity into an asset.

Community-Based Planning Staff concluded that “the proposed use is in conformance with the master plan and implements the vision of the master plan in a way that will solidify and enhance the importance of eastern county to the overall economy and well-being of Montgomery County.” Exhibit 159, p. 4. There is nothing in the record to contradict that assessment, and the Hearing Examiner so finds.

F. Response of the Neighbors

The response of the community has been overwhelmingly in support of the petition. Letters of support were filed by the Calverton Citizens Association (Exhibit 66), the Greater Colesville Citizens Association (Exhibit 87), the West Farm Homeowners Association (Exhibit 114), the Tamarack Triangle Civic Association (Exhibit 116), the Riderwood Village Resident Advisory Council (Exhibit 118), the Greater Silver Spring Chamber of Commerce (Exhibit 50(b)), the U.S. Food and Drug Administration (Exhibit 104), the Southern Asian Seventh Day Adventist Church (Exhibit 67), the Washington Spanish Seventh Day Adventist Church (Exhibit 99), the People’ Community Baptist Church (Exhibit 97), the Peoples’ Community Wellness Center (Exhibit 96), the Labquest Partnership

(Exhibit 98), Stuart Rochester, Chair of the Fairland Master Plan Citizens Advisory Committee (Exhibit 81),¹⁹ and literally hundreds of area residents.²⁰

Geoffrey Morgan, Vice President for Expanded Access of WAH, described the extensive community outreach for the project, which focused on community associations and organized groups primarily within sight and sound of the proposed location and those that were central to the primary service area. Some examples of specific groups and individuals he met with are the Calverton Citizens Association, the West Farm Homeowners Association, the Riderwood community, the Fairland Master Plan Citizens Advisory Council, East County Citizens Advisory Board, Tamarac Triangle Association, the Greater Colesville Civic Association, Lab Quest, the FDA, and key community leaders like Dan Wilhelm, Stewart Rochester (Chair, Fairland Master Plan Citizens Advisory Committee), Don Praisner, Patrick Philitis, and Dan Epps. He also interacted regularly with many of the churches and the faith groups in the eastern county and the Prince George's County area. Exhibit 101(xxx) is an updated chronology of the outreach program, and it indicates that over 50 such meetings have been held since October 6, 2005. Petitioner has received overwhelming written support for the project from these groups and nearby residents.

Mr. Morgan testified that Petitioner has a history of working with Martin Klauber, the People's Counsel and a Citizens Liaison Council (CLC) in Takoma Park, and is open to having a Community Liaison Committee for this project, as suggested by Mr. Klauber. Mr. Morgan prepared a plan for a CLC, which was introduced as Exhibit 127, without objection. Tr. 46-48.

It would be a means and mechanism to communicate and interact between the hospital and the

¹⁹ Mr. Rochester's letter did not make clear whether he was writing on behalf of the Fairland Master Plan Citizens Advisory Committee, or on his own behalf.

²⁰ The majority of the letters (over 500) are form letters of support from residents of Riderwood Village, a retirement community just east of Cherry Hill Road. These letters emphasize that, as seniors, they strongly support the relocation of the hospital, which will provide easy access to healthcare. Some of the letters contain individual comments, as well.

immediate communities. Petitioner proposes that it be established under the auspices of the Fairland Master Plan Citizens Advisory Committee, as the core membership, and supplemented with representation from other groups, especially those within sight and sound of the new property. Examples would be the Calverton Citizens Association, Riderwood Village, West Farm Homeowners Association, Greater Colesville Citizens Association, Tamarac Triangle Citizens Association, Paint Branch/Powder Mill Estates Citizens Association and, the People's Counsel, Martin Klauber, as an *ex officio* member.

The CLC would meet two times each year after the hospital is open to the public. Petitioner proposes a meeting frequency of three times each year and an initial organizational meeting prior to the start of construction. Minutes would be taken and distributed, and the community liaison council would prepare an annual report to be submitted to the Board of Appeals. Procedurally, there would be no requirements for quorum, voting, or specific attendance. Community groups would be invited and notified, and may attend at their own election and based upon their own degree of interest.

The Hearing Examiner agrees that a CLC would be beneficial to promote continuing consultation between the hospital and its neighbors. A condition recommending the creation and operation of a CLC along the lines outlined by Mr. Morgan is included in Part V of this report.

The only opposition was a January 8, 2008 letter from Jerry and Alice Wahl of 1518 Featherwood Street, Silver Spring, expressing concern about potential noise from sirens and helicopters; traffic congestion; and traffic danger in conjunction with the nearby school bus depot. Exhibit 26. Mr. Morgan testified that when he received the opposition letter from the Wahls, he immediately contacted them. He thereafter met with them for about two hours and discussed their concerns about traffic, the nearby school bus depot, and ambulance and helicopter noise. Tr. 43-46. He characterized the discussion as centered more on the bus depot and ambulance noise issues than

on helicopter concerns. Tr. 65. He did not indicate whether or not their concerns were alleviated. The Wahls did not appear at the hearing, but they also have not withdrawn their letter. The Hearing Examiner therefore assumed that they still have concerns, and those concerns were addressed at length in other parts of this report. The helicopter noise issue was addressed in Part II.C.2, on pages 29-34 of this report. Based on that discussion and the record in this case, the Hearing Examiner finds that the helipad placement and operation are appropriate and that noise relating to helicopters can be minimized by appropriate conditions, which have been recommended.

As to ambulance noise, Mr. Morgan noted that relocating the hospital to the subject site, which is at the center of the hospital's service area, will reduce the travel of ambulances up and down Route 29 and will improve patient care and timeliness of emergency transport. Tr. 45-46. While that comment does not directly address the Wahls' ambulance noise concerns, the Hearing Examiner finds that ambulance noise is an inherent characteristic of any hospital, no matter where it is located. Moreover, the subject site is not in a residential zone and can be accessed by ambulances traversing major highways such as Route 29 and roads running through industrial and commercial areas (*i.e.*, Plum Orchard Drive, Broadbirch Drive and Tech Road). Thus, it appears that the hospital will be well located to reduce the impact of ambulance noise upon residents in the general area.

Traffic issues were discussed in Part II.D.2, on pages 56-70 of this report. The Hearing Examiner is satisfied that the projected traffic from the proposed hospital will be less than was previously approved for this subdivision, and that the timing of hospital shifts and road improvements will minimize conflicts with school busses and peak hour traffic, in general.

The Hearing Examiner finds that all of the community concerns regarding the proposed hospital were appropriately addressed.

III. SUMMARY OF THE HEARING

A. Petitioner's Case

Petitioner called eight witnesses at the hearing, Jere Stocks, President of Washington Adventist Hospital; Geoffrey Morgan, Vice President for Expanded Access of WAH; Scott Rawlings, an architect; Trini Rodriguez, an expert in landscape architecture, site design and planning; Wes Guckert, a traffic engineer; Andrew Der and Dan Pino, civil engineers; and Phil Perrine, a land planner. There was no opposition testimony at the hearing.

The Hearing Examiner announced, as a preliminary matter, that he lives near Suburban Hospital, and there is also a helicopter noise issue regarding Suburban Hospital. All parties were given the opportunity to object to the Hearing Examiner conducting the hearing in which helicopter noise is an issue, but no objection was raised. Tr. 6.

Petitioner's attorney, Robert Brewer, agreed to the conditions set forth by the Planning Board in Exhibits 124 and 124(a)), and to Technical Staff's calculation of the number of parking spaces needed, 2,136, stating that Petitioner would provide 2,138 parking spaces. Mr. Brewer also noted that the subject site "was already subdivided, and an extension to the subdivision and APF approval was granted on April 24, 2008 by the Planning Board so it is subdivided and has incurred APF approval." Tr. 7-8.

In response to a question raised by the Hearing Examiner, Mr. Brewer argued that the hospital special exception height standard supplants the applicable Zone's height limit because it is a "use-specific height criteria." Tr. 9. Finally, Mr. Brewer noted that this project will have to go through site plan review by the Planning Board, as required in the I-3 zone, and if changes are material, Petitioner would come back and seek an administrative modification to its plans with the Board of Appeals. Tr. 15-16. He also submitted Petitioner's affidavit of posting (Exhibit 125).

1. Jere Stocks (Tr. 16- 35):

Jere Stocks testified that he is president of Washington Adventist Hospital. As such, he oversees day-to-day operations, collaborates with the medical staff and works on implementation of the hospital's strategic plan. The hospital decided in 2005 that it needed to relocate in order to best expand services, enhance facilities and expand access to healthcare. The current location in Takoma Park is inadequate in size (with 13 usable acres), access and parking, and it has aging and inefficient facilities. After the move, the Takoma campus will be used for some form of health and community services. It will not have in-patient beds, but it will have accessible primary care, special care and urgent care services, which are a very important part of the safety net structure.

The subject site was chosen because the White Oak/Fairland area right off of 29 and Cherry Hill Road is the very center of the Hospital's service area. The Department of Hospital Associations, defines the primary service area as where 60 percent of the patients come from. The present location of the hospital is in the furthest southern tip of that service area. The proposed cite is easily accessible and it is a commercial area. The nearest residential areas are off to the east, such as Riderwood, a large retirement community with over 3,000 residents. The site is very close to Prince George's County line, and not far from Interstate 95 and the proposed Inter-County Connector, as shown on Exhibit 126. Its size makes it possible to establish adequate space for physicians' offices, which benefits patients and physicians, alike.

The site also has amenities, such as the lake, which will provide a good environment for healing. It is large enough to provide for two garages and to handle a surge in capacity if needed in emergencies. Mr. Stocks discussed the benefits of single-patient rooms, as planned for the new facility, including infection control, privacy, efficiency and conflict avoidance. According to Mr. Stocks, there is no financial advantage.

The campus is designed with the next 50, 60 or 70 years in mind, not just what happens in the next few years. They will be able to construct and expand the hospital, including the ED capacity with additional critical care infrastructure, ICU's and the like. Even without new construction, the top floor will be built right now with a shell space, so in very short order, if community needs arises, the hospital can grow 60 beds within a fairly short period of time in that shell floor.

The hospital is also planning, to the north end of the campus, a fitness center, a wellness center, and some kind of a day care configuration. Mr. Stocks noted that the hospital has been coordinating its planning with its neighbors. The plan is to begin construction on this new hospital in 2010, with an opening date in 2012.

2. Geoffrey Morgan (Tr. 35-69):

Geoffrey Morgan testified that he is Vice President for Expanded Access of WAH. As such, he is responsible for the relocation of Washington Adventist Hospital and the re-use of the existing campus in Takoma Park. In the past, he has been, *inter alia*, chief operating officer for operations at the hospital and now currently holds responsibility for development.

Mr. Morgan described the extensive community outreach for the project, which focused on community associations and organized groups primarily within sight and sound of the proposed location and those that were central to the primary service area. Some examples of specific groups and individuals he met with are the Calverton Citizens Association, the West Farm Homeowners Association, the Riderwood residents, the Fairland Master Plan Citizens Advisory Council, East County Citizens Advisory Board, Tamarac Triangle Association, the Greater Colesville Civic Association, Lab Quest, the FDA, and key community leaders like Dan Wilhelm, Stewart Rochester, Don Praisner, Patrick Philitis, and Dan Epps. He also interacted regularly with many of the churches and the faith groups in the eastern county and the Prince George's County area. Exhibit 101(xxx) is an

updated chronology of the outreach program. Petitioner has received overwhelming written support for the project from these groups and nearby residents.

Mr. Morgan further testified that when he received the opposition letter (Exhibit 26) from Mr. and Mrs. Wahl, he immediately contacted the Wahls. He met with them for about two hours and discussed their concerns about traffic, the nearby school bus depot, and ambulance and helicopter noise. Tr. 43-46. He characterized the discussion as centered more on the bus depot and ambulance noise issues than on helicopter concerns. Tr. 65. Mr. Morgan noted that relocating the hospital to the subject site, which is at the center of the hospital's service area, will reduce the travel of ambulances up and down Route 29 and will improve patient care and timeliness of emergency transport. Tr. 45-46. He did not indicate whether or not the Wahls' concerns were alleviated.

Mr. Morgan indicated that Petitioner has a history of working with Mr. Klauber and a Citizens Liaison Council (CLC) in Takoma Park, and is open to having a Community Liaison Committee for this project. He prepared a plan for a CLC, which was introduced as Exhibit 127. It would be a means and mechanism to communicate and interact between the hospital and nearby communities. Petitioner proposes that it be established under the auspices of the Fairland Master Plan Citizens Advisory Committee as the core membership, and supplemented with representation from other groups, especially those within sight and sound of the new property. Examples would be the Calverton Citizens Association, Riderwood, West Farm Association, Colesville Association, Tamarac Triangle, Paint Branch Powder Mill from Prince George's, and, the People's Counsel, Marty Klauber.

The CLC would meet two times each year after the hospital is open to the public. Petitioner proposes a meeting frequency of three times each year and an initial organizational meeting prior to the start of construction. Minutes would be taken and distributed, and the community liaison committee would prepare an annual report to be submitted to the Board of Appeals. Procedurally,

there would be no requirements for quorum, voting, or specific attendance. Community groups would be invited and notified and may attend at their own election and based upon their own degree of interest.

Mr. Morgan discussed the Operations Statement for the Hospital (Exhibit 101(ppp)), which he prepared. All acute care services that are currently provided in Takoma Park would be planned for relocation to this new site. They include advanced cardiac services, cardiovascular services, treatment and research, clearly emergency medical services, maternity services, mental health services, the full scope of diagnostic and therapeutic imaging services, and a broad compliment of outpatient services such as outpatient surgery, cancer care, cardiology rehabilitation services, health and wellness services, and mental health services.

Washington Adventist Hospital is one of two tertiary cardiac providers in Montgomery County and clearly the longest standing provider of tertiary cardiac services. Tertiary services are a more invasive and direct treatment of inherent disease, including open heart surgery and therapeutic intervention in coronary artery disease. In the new hospital, there will be a replication and perhaps an expansion of the cardiac facilities.

At the new hospital, the plan is to employ approximately 2,000 employees to serve staffing requirements for approximately 1,300 full time equivalent employees, working a variety of shifts. There are 8-10 different shifts that start anywhere from 4:45 in the morning through as late as 6:45 in the evening. It's a variety of 12, 8, and 4 hour shifts. There's some 10 hour shifts and some 15 hour shifts. The main shift, where you would have the critical mass of staff on site, would be 6:45 in the morning to 3:15 in the afternoon. Of the 1,300 full time equivalent employees, about 56 percent of those full time equivalent employees would work between 6:45 and 3:15 in the afternoon.

There are approximately 600 practicing physicians with privileges at the hospital. In addition, there are approximately 30 house-based physicians – emergency physicians, anesthesiologists, surgeons, “intensivists” (*i.e.*, critical care physicians) and the like. About 100 physicians in private practice visit the hospital each day to provide services.

There are about 96,000 patient visits to the hospital incur each year, and it customarily grows about 3 percent a year. Patients are of all religious beliefs. The 96,000 is comprised of the admitted patients, the ambulatory or the out-patients, and the emergency care patients. It is expected that there will be 50,000 emergency encounters per year at the new site. About 80 percent of the emergency department encounters are walk-ins, leaving 20 percent that arrive by ambulance. There are also about 700 visitors per day. In addition to the visits, there are deliveries to the hospital made continuously. There are some semi-tractor trailers that arrive with food supplies, liquid oxygen deliveries to the campus and the like.

The new campus is proposed to have an ambulatory care building, which is more central to the parking facilities and the main entrance of the hospital, and it would provide the majority of the out-patient services. The faith center is designed to house clinical pastoral care functions, clinical pastoral training, general education and conference-related facilities. Hospital requirements will comprise the majority of the business day, while the external community uses will occur after hours or on weekends.

The new campus is also proposing two new medical office buildings. The recruitment of physicians and medical office space capacity is an important and critical element of Petitioner’s proposed plan. One structure will be approximately 130,000 square feet, on the south of the site, and the second will be 100,000 square feet, on the north of the site.

Mr. Morgan testified that he was the administrator responsible for actually implementing the rooftop helipad that is currently operating at the Takoma Park location. Petitioner has operated that for over 12 years and experiences approximately 250 flights in and out of the hospital each year, with the predominant number of flights for cardiac transfers into the advanced cardiac program. Petitioner expects the use on the new campus to be consistent with the current experience in Takoma Park. The helipad will be used primarily to accept inbound cardiac emergencies originating from other health care facilities. The emergency helipad will also be used to medevac certain patients to health care facilities in order to provide higher levels of care, such as for burn, trauma, neurological conditions, high risk pregnancies, neonatal emergencies, and other acute pediatric conditions. There will be no non-emergency flights. Petitioner actually logs every flight that comes in or goes out and collects extensive amounts of information on each flight, including the time of day, the point of origin, the receiving physician, the patient's condition, and those kinds of things.

The emergency helipad on the new campus will again be used for the advanced cardiac center, and many of the helicopter transports are cardiac-related. Petitioner has been careful and attentive to the environmental impact of the planning, and Petitioner invited Maryland State Police Aviation Division to come in and review the project and advise Petitioner on its plans. The current design addresses the following objectives for future helipad operations. Clearly, it is important to have the helipad close to the hospital's emergency department, while avoiding major building structures such as elevator penthouses, cooling towers, and fresh air intake vents. It must be far enough from the magnetic resonance imaging (MRI) equipment to avoid negative effect on aviation instrumentation, so the ground level pad, set apart from the hospital and the parking structure, is an ideal location. The proposed location also provides the greater safety and effectiveness with respect to snow and ice removal. The ground level helipad also supports potential use by military helicopters in support of

disaster relief operations. Mr. Morgan noted its mid-campus location on a rendered site plan (Exhibit 128).

Mr. Morgan described safety features for the helipad. In addition to the ground level location, which avoids the main hospital structures and avoids the noise and vibration associated with the rooftop landing, there are a number of ground measures to prevent safety problems. Petitioner intends to construct a barrier surrounding the helipad to prevent pedestrians from gaining access to the landing zone, and a series of security gates are also proposed to stop traffic from obstructing the helicopter landing, which is a brief event. Petitioner has a very good relationship with the medevac providers. Petitioner receives a communication by radio to hospital security services about 20 minutes in advance of helicopter arrival, and that gives the hospital the opportunity to mobilize security personnel to go out and facilitate the safety for pedestrians and vehicular traffic.

Flight paths are determined by many factors as pilots approach a hospital. There are advisories by the FAA and other entities requiring flight paths for helicopters, but Petitioner works with its providers to create a noise sensitive approach to the campus. In the Takoma Park location, it is a steeper than normal approach, essentially over the campus of the hospital, and it is something that Petitioner monitors and reviews with the medevac provider if there are issues or concerns. On the new campus, given the general wind directions and the building locations, helicopters will generally arrive from the from the east and south near the Orchard Shopping Center and Plum Orchard Drive, and then depart off to the north and to the west.

In response to the Hearing Examiner's question as to whether the flight path in would take the copters over residential areas to the east of Cherry Hill Road, Mr. Morgan stated that, in Takoma Park, Petitioner has worked out a system with the medevac providers so that they use a steeper than normal descent to the facility. Petitioner expects to have a similar approach and flight path for this campus.

In conversation with the Maryland State Police, they expect to travel along major roadways and bring the helicopters in over the Orchard Center and the industrial area, at a higher altitude, and drop steeply over the hospital campus. The idea there is to use a noise abatement strategy with respect to their approach. According to Mr. Morgan, that actually has worked in Takoma Park, which is a much tighter residential footprint. [In response to a question from the Hearing Examiner, Petitioner's attorney, Robert Brewer, indicated that Petitioner would be amenable to the conditions regarding helicopters imposed by the BOA in the case of Montgomery General Hospital, CBA-2521-I (effective January 18, 2008), if the Hearing Examiner thought them appropriate. Petitioner already maintains a log of helicopter flights, which it would share with DPS. Tr. 65-66.]

With respect to parking, the entirety of employee parking is projected to be in one of two parking structures, and all visitors to the campus, except for emergency department visitors, will park in a parking garage. The parking charge will be reasonable and similar to those used by other hospitals in Montgomery County.

Mr. Morgan stated that the conditions suggested by the Planning Board as a condition of approval are acceptable to the hospital. Tr. 66-67.

Mr. Morgan also testified that Petitioner was considering how to design day care for the new campus to fulfill the needs of the hospital community, whether from the medical office buildings or the main hospital. It is likely that a future special exception amendment of some kind would be necessary for this use, although it may be provided within presently planned structures.

3. Scott Rawlings (Tr. 70-116):

Scott Rawlings testified as an expert in Architecture. He was asked to develop the entire property of the health complex . He was given a space program and direction on the overall size and direction of the facility, as well as design principles, including use of "the Planetree design concept."

The Planetree design concept is one of the established guidelines or criteria for the development of a healthy environment for health care, which boils down to the ability to integrate the building with nature and to bring in natural light in order to make a healthier environment for the patients.

Mr. Rawlings described features of the property as shown in photographs (Exhibit 130) and its topography (Exhibit 131). He noted that the site drops significantly down towards the lake from all directions. It falls approximately 40 feet across the site to the lake from Plum Orchard Drive. He decided to develop the hospital on the southern part of the site because of its size and its views to the lake, using the northern portion for parking, medical office buildings, and access.

To the south, will be a medical office building, a south parking garage, the main hospital, the ambulatory care building and the faith center. The property is about 48 acres, and approximately 73 percent of the site will remain open and natural. The FAR will be 46 percent, while 50 percent is permitted. Mr. Rawlings sought to design a cost effective development of a “sustainable nature,” combining green architecture and good practices. He also sought a design that would relieve stress on the patient, by making the natural features (*e.g.*, the lake and a healing garden) visible. The access points and building entrances are designed to be convenient and visible to ease “way-finding” and to avoid stacking.

The main hospital has approximately 500,000 gross square feet of floor area. It is seven stories, with an eighth lower level (*i.e.*, a zero level) below grade,²¹ and it is approximately 126 feet, 8 inches, tall, as measured from the average grade along the front of the hospital.

The hospital building will have an “on-stage/off-stage” design, which means there's an off-stage corridor and transportation system along the back of the hospital to move staff and an on-stage

²¹ Technical Staff refers to the hospital building as eight stories (Exhibit 102, pp. 14-15) because it will have eight functioning levels, but the zero level is technically a cellar under the Zoning Ordinance and therefore is not a story. Tr. 86.

corridor system that runs along the front, which is like a mall that will move pedestrians, visitors, and family.

Directly to the east of the main hospital is the Ambulatory Care Building. This is a separate structure tied directly back to the main hospital at the entrance with an enclosed bridge. The bridge is to move staff and patients directly from the main diagnostic portion of the hospital into Ambulatory Care A. The main function of Ambulatory Care A is to provide heavy outpatient or ambulatory care services so that this population traffic and pedestrian flows does not need to interact with this population in the main hospital. Ambulatory Care Building A is two stories, with a cellar. It is approximately 32 feet tall and has about 60,000 gross square feet of floor area.

To the south of the Ambulatory Care A is the internal drive into the campus to serve the south parking garage at the south end of the campus and Medical Office Building 1 at the south end of the campus. Medical Building 1 is a standard medical office building, five stories, with a cellar, approximately 132,000 gross square feet and 60 feet tall. It will contain primary physician offices and separated medical practices. The South Parking Garage is six levels, four above grade, two below grade, and contains about 1,000 spaces. It is the primary parking garage for the patients at the hospital. They will come down Plum Orchard Drive onto the main hospital drive, drop off at the main entrance, circle back out and park in the main parking garage. There are three access points to the parking garage (north, east, and the west) to provide multiple points of access, entry and access from the drives.

Directly to the west of the parking garage at the south end of the hospital is the Faith Center, which will be physically connected to the hospital. It is one story, approximately 16 feet tall, and will contain offices, education facilities, and a chapel seating approximately 100 people. It will look west towards the pond, out onto the Healing Gardens. There will be extensive healing gardens around the

western side of the hospital and the southern side of the hospital in between the hospital and the lake to take advantage of the lake view.

On the north end of the campus will be a second Medical Office Building, MOB 2. This is primarily for office function, physicians, family practices, and the like. It will be four stories tall, approximately 48 feet tall, and approximately 100,000 gross square feet.

Directly to the west and behind the MOB 2 is the North Parking Garage, similar in size to the South Parking Garage, but the North Parking Garage is done completely below grade except for the top half, so it has six levels completely below grade. It will hold approximately 1,000 cars and serve primarily staff for the hospital and patients and visitors for MOB 2. The northern entrance off of Plum Orchard will directly access MOB 2 and the North Parking Garage, separating that traffic from ambulance and other traffic.

The staff will park in the North Parking Garage and will travel about 560 feet on a pedestrian path to the west into the hospital at the staff entrance near the ER. The extra 60 feet of distance from the entrance was necessary to keep the structure out of the wetlands. Also, by moving it 60 feet to the north, it is bit out of the steepest fall of the site, allowing a better pedestrian walk path to the hospital. The North Parking Garage will not be used by patients accessing the main hospital. Thus, the 560 foot distance is not likely to be traversed by anybody other than staff.

Between the North Parking Garage and the Main Hospital will be the helipad. The helipad is surface mounted, not on top of the building. It is directly adjacent to the emergency room, and it is positioned along the path of the ambulance. A safety gate will drop to prevent service trucks from accessing the loading dock service road to the west of the hospital during a helicopter approach. There will also be a third gate preventing any ambulances from leaving the emergency room drop off lot and accessing Plum Orchard Drive during helicopter arrivals.

The helicopter pad is approximately 80 feet by 80 feet, and it is will be designed by in accord with FAA and State Police guidelines. It will be shielded on the ground with landscaping and a man made barrier. The helicopter approach will come down Plum Orchard Drive to the helipad into the prevailing wind. Helicopters can land on top of hospitals, but that is more expensive and a little more dangerous in the event of a fuel fire or explosion. The ground placement also allows more opportunity for changes in technology and equipment.

In the event of a large scale natural disaster or something similar to a terrorist attack, the north parking garage will be used as a large triage center. That triage center is best positioned directly adjacent to the emergency room and with enough room in between to bring in vehicular traffic. The helipad would be part of the access during such a surge.

The main loading and service area for the hospital is along the west side of the building, in the back of the hospital, taking advantage of the fall of the land. It will come off of the ambulance service road, between the hospital and MOB 2, directly off of Plum Orchard, swing around the hospital to the west, come to the south and directly access the loading dock to the west of the hospital. There are up to four active loading zones at one time, and this is also where trash pick up and waste removal would occur. The main plant of the hospital, the main generators and those types of items, will be inside the hospital on zero level, except for the oxygen tank itself. By code, it has to be away from the hospital, so it is in placed to the north, near the North Parking Garage. Each MOB also has its own small loading dock, given the size of the building.

Mr. Rawlings introduced the blocking and stacking diagram for the hospital (Exhibit 133), and discussed the functions of each level. The ICU and the emergency room and radiology are at the critical end of the hospital, which is the north end. The south end contains primarily administrative

functions and public functions, which allows the front door to remain public access along the east side and the main entrance from the public garage, which form a triangle for heavy use.

Patient rooms are in the tower stacked above, starting on level 3, 4, 5, 6, and 7. The patient rooms are configured and are very flexible 36 bed units. It's what's typically referred to as traditional race track, which is the best and most efficient nursing layout. It's referred to as a race track because the patient rooms run along the outside, and there is a corridor very similar to a race track running inside, so the core functions are in the center. This is a solid, well planned, long tested layout for patient care. Again, there are all private patient rooms as discussed earlier, adding just a little bit more to the information documented earlier.

Hospital design is governed by a set of guidelines referred to as the American Institute of Architects (AIA) Guidelines for Design and Construction of Health Care Facilities. This is updated every three years and then adopted by the states. It's primarily put together by health care architects, engineers, and the state licensing officials. They have just concluded a 2008 version, and it commands private patient rooms for each new facility. Maryland has not adopted it yet, but Mr. Rawlings predicted they will. They have a history of adopting most of it in the past. According to Mr. Rawlings, private rooms are more efficient than semi-private. They run on an 82 percent efficiency, as opposed to 68-72 percent efficiency in a semi-private room.

All of the patient rooms are in two flanking race tracks around a central core, stacked on levels 3 through 7, which is the top floor, designed as a shell floor initially. Level 2 is a super diagnostics floor. It combines "Cath" (*i.e.*, arterial catheterization) labs and the ICU beds into one single plane. This makes it more flexible for the future. The first floor is primarily public free flow. It has the food court, public amenities, and offices on the south and the critical access to the north.

The level zero, the lowest level of the hospital, is non-patient, non-visitor. It is all staff and materials movement and facilities, directed operations for the hospital itself.

Exhibit 134 contains illustrated renderings of the hospital design. The hospital's general character design is to blend in with nature and be very sustainable for the area. Heavier materials will be used along the base, primarily polished concrete, polished block. Sitting on top will be a very stable pre-manufactured panel, probably in some type of wood material, with "rain screen." Rain screen means a skin is applied to the outside and allows the weather, the rain and the wind to breathe with the building. It allows the building to have a longer life. In Mr. Rawlings opinion, combining the wood materials and the weathered metal at the windows, sitting on top of a smooth stone base, works well with the surrounding area and nature.

Exhibit 135 contains four flat elevations of the hospital itself. The natural glass along the main two levels characteristic on all sides allows ample natural light into the building on those two main public levels and allows for easier way finding. The general idea of this hospital is 80 percent of the public and visitors will move along this front spine along the east side of the hospital. They will always have natural light to one side. They'll always have a connection to the outside allowing them to keep orientation. They will be able to move along and access all points of the hospital from that corridor so they don't ever have to dive deep into the hospital.

Exhibit 136 is the Ambulatory Care Building elevations. All of the ancillary buildings or secondary buildings on the complex should blend in with the main hospital and have the same character. All the other buildings use similar materials as will be used on the base of the hospital, which would be the polished concrete and the polished block and glazing systems. Exhibit 137 has the elevations for both Medical Buildings 1 and 2. Again, keeping in character with the complex and very similar Ambulatory Care Building A.

Exhibit 138 shows the parking elevations for the South and North Parking Garages. They are very similar in character, and he designed them to blend in with the ground and almost disappear, using the grade. They are designed with similar elements and a lot of landscaping around the edges to make them blend. The south parking garage rises up four levels, and it will create a visual barrier between the campus and the adjacent property.

Petitioner will apply for LEED (Leadership in Energy and Environmental Design) certification for this hospital. LEED is an established criteria checklist by which a building's sustainability is judged. One of its criteria is the lighting level on the campus and ensuring that you are not light polluting your surrounding neighbors.

Exhibit 139 shows the expansion plan on the site. It is not part of the special exception, but it is just showing thinking for the future development of the hospital to a 400 bed facility. That will require a small expansion to the direct north off of the ER to expand ER capabilities, and it will require an additional tower to the west between the hospital and the lake. The long range strategic plan for the hospital (Exhibit 140) refers to the set of documents outlining the future potential of the hospital.

In Mr. Rawlings opinion, the proposed hospital complex is in conformance with the standards of the I-3 Zone and the section relative to hospitals, Zoning Ordinance §59-G-2.31, with respect to the design standards. The granting of this application will be consistent with the purposes and standards of the I-3 zone. The impacts of the hospital should be minimal and all inherent with the operations of a hospital. There are no non-inherent effects arising from this use at this particular location. The site is well positioned for the hospital. It is screened on all four sides. It has good access. It is a good site for the hospital. Mr. Rawlings sees no adverse impacts on the surrounding area, either inherent or non-inherent. Mr. Rawlings further testified that, in his opinion, the proposed

special exception satisfies the criteria of Section 59-G-1.21, the general conditions, and Section 59-G-2.31, the specific conditions of the zoning ordinance.

4. Trini Rodrigues (Tr. 116-139):

Trini Rodrigues testified as an expert in landscape architecture, site design, and planning. Her firm was “charged with creating a very unique facility” to incorporate “the healing benefits of nature,” which are possible on this site. The goal overall was to ease the hospital users’ stress and anxiety and fear. Their plans have interwoven the concepts of sustainability and environmental design to achieve these goals, as shown in the overall landscape plan, Exhibit 141. The landscape is a unifying component, with the lake and the wooded areas major elements of that unifying environment. Ms. Rodrigues used a circulation diagram (Exhibit 142) to show the traffic circulation on the site, and she indicated that there are no conflicts with pedestrian circulation (Exhibit 143). Part of this system is the lake and the trail, which is more of a cardiovascular and fitness recreational trail. Exhibits 144 and 145 show proposed signs for the site and their locations. [Petitioner’s counsel, William Kominers agreed that copies of the sign permits, once granted by the county for those signs, will be filed with the Board of Appeals. Tr. 126]

Ms. Rodrigues further testified that the site is broken down into landscape districts (Exhibit 146), with exhibits showing the landscaping in each. Exhibit 147 illustrates the main building and ambulatory care entrances. Exhibit 148 shows the pedestrian link by which users of the hospital, after they park their vehicles, connect to the main facility. Exhibit 149 illustrates landscaping for the MOB’s and parking garages. Landscape again serves different purposes, announcing the entrances but also providing screening of the loading areas. Petitioner will also provide extensive bicycle parking areas. Exhibits 150 and 151 illustrate the healing gardens and the lake. There are terraces which overlook the lake and pedestrian connections, with the idea that the healing gardens have a

very strong therapeutic effect on the patients. They're designed to stimulate all the senses, with varied textures, and trees and plant materials of different fragrances. The lake is much lower than the main level of the hospital, so there will be a series of ramps down to the lake and a path that articulates around the lake, winds its way through the edge of the lake, through the woods. There is a proposal for a fitness trail and a picnic area that can be used by patients or special events, and by staff as well as visitors.

Ms. Rodrigues described lighting for the facility as providing enough lighting for safety but at the same time without spilling over on properties and boundaries. That goes for the buildings as well as the grounds. She testified that the hospital design is in conformance with the standards of the I-3 and I-1 Zones and Sections G-1.21 and G-2.31, and that there would be no non-inherent effects or adverse impacts from the hospital use at this location. [Mr. Kominers noted that the portion that's in the I-1 zone is the western side of the lake, so, there are no buildings within the I-1 zoned portion. The boundary line runs through the middle of the lake, with the I-3 zone to the east and the I-1 zone to the west.]

5. Wes Guckert (Tr. 142-190):

Wes Guckert testified as an expert in transportation planning and traffic engineering. Mr. Guckert did a local area transportation review (LATR) assessing the impact of the proposed new hospital on the road system. In general, he determined the amount of traffic generated by the existing hospital, made projections regarding the new hospital, examined transit utilization at the existing hospital, examined existing parking demand at the existing hospital, projected parking demand for the new hospital, determined impact and made recommendations for road improvements for the proposed hospital. He did a traffic study, dated November 30, 2007 (Exhibit 20(a)) and a supplemental traffic analysis dated March 10, 2008 (Exhibit 65(c)). He worked intensively with the

Park and Planning Commission's Transportation Planning Division staff to incorporate traffic data that they furnished to about the FDA and the Inter-county Connector.

As a consequence of this dialogue with the staff, Mr. Guckert prepared a series of proposals for intersectional and other improvements which were then further discussed with the staff. He also analyzed the effects that these improvements would have on the related intersections. These improvements became the conditions of approval that the Technical Staff recommended and the Planning Board approved at its hearing on April 24, 2008. On May 1, 2008, subsequent to reaching an agreement with the Technical Staff on these improvements, Mr. Guckert prepared, at the request of Staff, "an integrated traffic study" representing a compilation of all of the analyses that he had done and the improvements that had been negotiated and approved by Staff. It was introduced as Exhibit 152.²²

Mr. Guckert explained the design exception request plan (Exhibit 65(kk)), as a request to vary the driveway separation between the hospital's service drive entrance and the shopping center's loading dock entrance from the usual required separation of 100 feet to 70 feet. This issue will be addressed at site plan review.

Using Exhibit 126, Mr. Guckert showed the location of the county school system bus depot on Bournefield Way, south of Broadburch Drive (*i.e.*, just below the word "PARK" on the exhibit). He then addressed the question as to what impact the school buses would have when mixing with the hospital traffic. Mr. Guckert noted that the hospital is proposing to make improvements at three intersections along Broadburch, which is the travel route for the school buses. The school buses come out of Bournefield Way and travel east on Broadburch to Cherry Hill or travel west on Broadburch to Tech Road and then to Route 29. The school buses typically leave the depot at 6:00-6:30 AM and

²² The exhibit number was erroneously recorded by the court report as Exhibit 162.

they go in a direction opposite to that of hospital employees that are entering. The reverse will happen in the afternoon. Sometimes in the afternoon, the school buses will go in and out, but the fact is that the hospital employee shift changes at 7:00 AM and at 3:00 PM are generally flowing counter to the school buses. Most of the school buses are out of the area by the time the hospital's 7:00 AM to 3:00 PM shift is leaving. Given the fact that the busses and the hospital employees counterflow in their operation and the fact that the hospital will be making major improvements along Broadbirch, Mr. Guckert opined that the school buses in combination with the hospital traffic will not be a problem and will not create an adverse effect.

Mr. Guckert then reviewed the highlights of the integrated traffic study (Exhibit 152): He was asked by Technical Staff to count traffic at 16 intersections for existing conditions, as listed on page 3 of Exhibit 152. Staff furnished the background traffic information about trip generation and approved and un-built projects, as shown on page 10, 11, and 12 of that report. Those background counts were adjusted later in March of 2008 by the staff to account for the Intercounty Connector and FDA traffic. The ICC, the Intercounty Connector, is under construction and staff asked Mr. Guckert to take the Intercounty Connector traffic adjustments into account along Cherry Hill Road. The new compilation in Exhibit 152 supersedes the earlier executive summary. The last section of Exhibit 152, pp. 28 -40, gives an executive summary of the improvements that the hospital will make, that were identical to what the Planning Commission staff recommended.

Mr. Guckert calculated trip generation rates for a general office compared to a hospital on page 17 of Exhibit 152. He testified that the adequacy of public facilities in the subdivision in which the hospital would be located was re-approved by the Planning Board on April 24, 2008, for 1341 trips in the morning peak hour and 1216 trips in the evening peak hour based on general office traffic generation rates. The proposed hospital will generate about 960 morning peak hour trips and 950

evening peak hour trips, well below the number of trips already approved by the Planning Board for the site. As shown, the hospital will generate somewhere between 270 and 400 fewer peak hour trips than what is already approved under the adequate facilities ordinance. There would be less traffic from the hospital development than there would have been under the originally approved development. Tr. 156-157.

Mr. Guckert introduced Exhibit 153, an aerial photograph with proposed road improvements superimposed along Broadbirch, Cherry Hill and Plum Orchard, many of which are detailed on page 30 and 31 of Exhibit 152. These include bus shelters, crosswalks, traffic signals, audible signals, bike racks and turn lanes, all if approved by DPWT [now DOT].

The congestion standard in the area is now 1475 CLV. Some intersections are over that standard, but Mr. Guckert indicated that was acceptable, with mitigation. Given the extension of the adequate public facilities approval for the site, these improvements were intended to address the special exception traffic-related compatibility standards.

[Petitioner's attorney, Robert Brewer, expressed the view that the Board of Appeals in this case does not have to determine the adequacy of public facilities because it has been determined at subdivision by the Planning Boards re-approval of adequacy of public facilities under the APFO.]

Mr. Guckert noted that the hospital's peak one hour occurs 2:00-3:00 p.m. which is off-peak to the commuters, FDA, and all other background traffic. The primary employees' shift changes occur 6:00-7:00 a.m., 2:30-3:30 p.m., and 11:00 p.m., again all off-peak to commuting traffic. Most visitors arrive after the dinner hour; again, off-peak. Also, today's modern hospitals have lower trip generation off site because they have medical office buildings on site. By having the MOB's on site, you really reduce vehicle miles traveled versus having the medical office buildings located two, three, four blocks away, where doctors have to drive back and forth to the hospital or patients go to the

doctor and then to the hospital and get some tests. It will also be easier for ambulances to reach the hospital at its new location because the new hospital can be reached over four-lane roads.

In Mr. Guckert's opinion, the general character of the neighborhood is such, as an industrial park and a retail shopping area, that the traffic from the hospital ends up being compatible with those uses. Moreover, nearly all the proposed parking spaces will be in two parking garages versus surface parking, and the way it was set out will efficiently channel patients and visitors and caregivers from the south garage into the hospital and employees from the north garage into the hospital. So, it's an efficient way that the hospital has been designed. Also, with the improvements, the traffic and parking will be safe for vehicular and pedestrian traffic.

Mr. Guckert also opined that the amount of parking provided (2,138 spaces) would meet the requirements (2136). There is a considerable amount of traffic and parking as an inherent characteristic of a hospital use. There are non-inherent characteristics related to traffic and parking conditions that are associated with the hospital at this particular site, but they are positive, such as the direction of much of the hospital traffic being counter to peak-hour traffic in the area. In his opinion, there are no non-inherent negatives to the situation here.

Mr. Guckert stated that the letter from Gregory Leck of DPWT (Exhibit 111) had requested a review of off-site road improvements matters at the special exception stage that would ordinarily take place at site plan review. DPWT [now DOT] is the approving agency for all of the construction and design permits necessary for these improvements. Mr. Leck's letter also requested that other agencies have an opportunity to review what is now this compilation traffic study and that would include the Prince George's County Department of Public Works and Transportation and the State Highway Administration. Mr. Guckert testified that State Highway Administration does not approve anything here because state roads are not involved. The same can be said with regard to the Prince

George's County Department of Public Works and Transportation. Nevertheless, the compilation that Mr. Guckert prepared will be sent out by the Planning Board's transportation planning division staff to these agencies for their comments during the site plan process. Even the impact of the hospital on State Route 29 is not significant because the already approved subdivision would add more traffic to Route 29. [Mr. Brewer indicated that Petitioner did not want to hold things up for a review at this stage by DPWT, but would not object to keeping the record open for 30 days for that agency's input.]

Mr. Guckert further testified that from a traffic generation point of view and from a vehicle miles traveled point of view, the possible future day care serving the employees is not going to generate more trips than what the employees would generate anyway. It would reduce congestion by having it at one location. It would also not impact on parking.

Mr. Guckert indicated that policy area mobility review (PAMR) does not apply in this case because the subdivision was approved prior to its adoption, and he therefore did not evaluate the impact of PAMR. [When the Hearing Examiner questioned why PAMR does not apply to the special exception, since it was filed after PAMR's adoption by the Council, Mr. Brewer argued that PAMR does not apply because "the Planning Board's finding of the adequacies of public facilities . . . on April 24th, [2008] is a complete answer to the subdivision question and PAMR is merely a part of that subdivision question." Tr. 183. Mr. Kominers added that Technical Staff concluded that PAMR does not apply because no new trips would be generated beyond those already approved for the subdivision. In fact, fewer trips would be generated. Tr. 184]

Mr. Guckert indicated that the intersection improvements that he detailed will reduce the critical lane volumes below the background level at all where the CLV currently exceeds the congestion standard, as shown in the Technical Staff report (Exhibit 102) at page 21. He will submit

something for the record to explain discrepancies between some figures in his traffic study and those in the Technical Staff report. In his opinion, even though the CLV will exceed the congestion standard for the area at some intersections, the proposed improvements will, at the very least, reduce the CLVs at those intersections to below the background traffic conditions that existed prior to the hospital. Therefore, the hospital will not be making the situation any worse and the petition satisfies all requirements. According to Mr. Guckert, Petitioner is also meeting the 150 percent mitigation requirement in the new growth policy for intersections exceeding the congestion standard. Tr. 186-187. [Petitioner's attorneys argue that this standard does not apply because the hospital will produce fewer trips than approved at subdivision.]

Mr. Guckert testified that the installation of a new traffic signal at Tech Road and Broadbirch does not require state approval because those roads are not within the state's purview.

[Mr. Klauber objected to keeping the record open to await a transportation facilities review by DPWT because the Planning Board has made an APFO decision in this case.]

6. Daniel Pino (Tr. 191-208):

Daniel Pino testified as an expert in civil engineering. He prepared the storm water management plan, water and sewer plans, sediment control plans, and a fire action plan. He confirmed his analysis and findings set forth in the amended civil engineering report (Exhibit 101(ttt)). Since that report was produced, the storm water management concept plan has been approved by Montgomery County Department of Permitting Services, as indicated in their letter of January 28, 2008 (Exhibit 154).

Mr. Pino further testified that the parking to be provided by Petitioner exceeds the parking requirements outlined in the Chapter 59-E of the Zoning Ordinance. In his opinion, the proposed special exception application satisfies the criteria of 59-G-1.21 and 59-G-2.31 of the Zoning

Ordinance. He also opined that all the issues are inherent to the operation of the hospital and do not have an adverse impact on surrounding areas. There are no non-inherent effects. The design of the site and the hospital complex will be in conformance with the standards of the I-3 zone and the applicable engineering standards and those of the special exception. The development of the subject property will be in harmony with the applicable Master Plan, and the site has adequate facilities for stormwater management.

Mr. Pino also introduced a revised parking schedule (Exhibit 155), which complies with the Planning Board's conditions. Footnote 3 indicates to the reader that the number of spaces are in excess of the required number in order to comply with LEED. The parking calculations will be placed on a revised site plan. Exhibit 156 is a revised special exception composite site plan. The acreage devoted to off-street parking is 5.27% of gross acreage, well below the 45% maximum. There will be 2,138 standard spaces. There are 40 motorcycle spaces and 108 bicycle spaces.

Mr. Pino testified the distance from the West Farm Townhomes property line, east of the site, to the site's property line is about 1,200 feet. The distance from the subject property to the intersection of Broadburch Drive and Cherry Hill Road, east of the site, is also 1,200 feet. Those two measurements represent the distances to the closest residential development. He estimated the distance from the site to the nearest residential on the western side as a distance of about 4,800 feet. To the north, it would be 1,400 feet to the nearest residential development. To the south, from the property to the nearest residential, is about 4,000 feet.

7. Andrew Der (Tr. 209-218):

Andrew Der testified as an expert in environmental sciences. He supervised the preparation of the natural resources inventory and is familiar with the forest conservation plan. Exhibit 158 is the preliminary forest conservation plan for the subject property. It has changed since the

preliminary forest conservation plan that was originally submitted because an area at the northern end of the site previously marked “tree save not counted” is now counted as a preservation, which means there's more preservation and that reduces the need for reforestation. The circles with an “x” in them refer to significant trees which are authorized to be removed, along with other forest. The plan will be updated to show that symbol in the legend.

Mr. Der also confirmed the analysis as set forth in the amended environmental report (Exhibit 101(sss)) and opined that within his area of environmental science, the proposed special exception satisfies the criteria of Zoning Ordinance §§59-G-1.21 and G-2.31 and will not produce adverse impacts. “In fact, it complies with all the requirements and even exceeds them in many ways by vegetative enhancement and additional plantings.” Tr. 217. It also complies with parking requirements with the applicable forest conservation and environmental laws. In his opinion, the development of the subject property is in harmony with the applicable Master Plan, and it is very proactive in retaining a natural resources area.

Mr. Der noted that the project was approved under criteria more stringent today than before, and it creatively utilizes and updates an existing pond and storm water management facility, which is beginning to deteriorate, and will actually have an added benefit to that resource.

[Mr. Brewer announced that Mr. Leck of DPWT had agreed to shorten his request from 45 days to submit comments on the proposed transportation improvements to 30 days and the Petitioner consented to keeping the record open for 30 days for that review by DPWT.]

8. Phillip Perrine (Tr. 220-235):

Phillip Perrine testified as an expert in land planning. He prepared a land planning report addressing conformity to the Master Plan and the special exception's compliance with the various sections of the in the zoning ordinance. He corrected a typo in his amended land planning report

(Exhibit 101(rrr)) on page 2, where he erroneously referred to MOB1 as a four-story building. It is a five-story building. He noted that the Technical Staff had repeated the error on page 15 of their report (Exhibit 102).

Mr. Perrine recommended defining the neighborhood as an area bounded by US 29 to the west and Cherry Hill Road to the north and east and Powder Mill Road to the south and then around to Paint Branch Creek, all shown on Exhibit 126. His recommended area would extend a bit further to the south than Technical Staff's defined neighborhood, which stopped at the FDA property. Mr. Perrine would utilize Powder Mill Road as the southern border, but he also found Technical Staff's definition acceptable.

Mr. Perrine described the neighborhood as a business industrial park, by and large, including I-3 and I-1 and C-6 zoned land. It's called the US 29 Cherry Hill Road employment area. It goes down to Percontee, which is now a concrete recycling facility, and includes one to four story buildings, high tech, light industrial buildings, including contractors, processing, insurance companies, a State Highway Administration maintenance facility and a U.S. Postal Service distribution facility. There's a water tower about 500 feet west of the subject property that's over 100 feet in height.

In Mr. Perrine's opinion, the hospital proposal is compatible with the surrounding neighborhood. The site is "well embedded" into this business/industrial park, with the nearest residence being about a quarter of a mile away. He also mentioned that the hospital complex will be made up of multiple buildings and the main hospital building will have various architectural elements, a base, separate towers vertically and horizontally, separating architectural elements and reducing the visual scale of the building itself.

In terms of traffic it would be comparable to some of the other uses there. In fact, the hospital represents a reduction in the trips compared to what had been proposed. Moreover, because the hospital will have so much structured parking and so little surface parking, the green area will be much greater than it would have been if other industrial and business uses had occupied the subject site.

Mr. Perrine introduced the April 1, 2008 report from community based planning technical staff as Exhibit 159, which observed that the proposed use will provide an important public service in an area not currently served. The site is served by a local industrial road network and accessed by a major highway and an arterial road. This use will not have direct impacts on any residential community since it is not within a residential area.

Mr. Perrine opined that the proposed use would comply with the 1997 Fairland Master Plan recommendations. The Master Plan created the U.S. 29/Cherry Hill employment area, which included the Montgomery Industrial Park, the West Farm Tech Park, what's called WSSC Site 2, the Percontee property and the FDA property. The Master Plan recommended that this whole area be a moderate employment center, and they created an overlay zone that would allow for supportive services and retail facilities within that area to support the various businesses and industrial uses.

According to Mr. Perrine, the proposal would comply fully with the special exception requirements for hospitals in §59-G-2.31, the general requirements contained in section 59-G-1.21 of the ordinance, and the standards of the I-3 Zone. There are five other special exceptions in the area. There are two hotels, a drive-in restaurant, a filling station and child care. Those are all within a commercial area, not within any residential area. Taken together with the hospital, they would not change the character of the residential area, and they're not located within a residential

area. They are a service being provided to the business/industrial area in keeping with the Master Plan.

Mr. Perrine discussed Petitioner's request for a waiver from the requirement that parking be located within 500 feet of the major point of access, since Petitioner proposes that its North Garage be 560 feet from the access point to the hospital. Originally, the North Parking Garage was planned for directly behind the MOB 2 and Technical Staff asked that it be moved. Petitioner turned the garage so that it would be parallel with the stream valley buffer, and it caused the walking distance to be increased to 560 feet. In the course of all that, the pathway itself got changed too. It brought it forward, closer to Plum Orchard Road and everywhere there was less grade, a better location essentially for the walk. While it is longer, it is in a better location, and this is a pathway used only by the staff to go from that North Parking Garage to the hospital, so it will be used essentially by informed people who will be traversing it day after day. It will not be used by guests, visitors or patients. In his opinion, this locating the garage 500 feet from the hospital entrance is not necessary to accomplish the objectives of the Zoning Ordinance §59-E.

Mr. Perrine further testified that in terms of size and scale, there is inherently with a hospital a rather large, bulky physical plant, multiple buildings often times, structures that are at or above eight stories. They often can have a visual impact when reaching that scale. The location of this site, however, well within a business/industrial project, a quarter of a mile from the nearest residence, means there isn't any adverse impact related to the inherent qualities.

In terms of activities and scope, there are certain things a hospital has to have, a broad variety of in-patient care and emergency services. Certainly, ambulance vehicles coming to the hospital, 24 hours, 7 days a week operation and a staff that can be rather large. So, although they are inherent, again, because of the size, location, and type of surrounding uses, there are no adverse

impacts related to adverse inherent effects for this situation. You have to have lights in and around a hospital, but Petitioner is seeking LEED certification, which will require a more careful analysis of the lighting impact and for conservation purposes.

Regarding noise, Mr. Perrine testified that the hospital will be well within the limits. There is inherently noise associated with a hospital, from vehicles, HVAC systems and helicopters. The helicopter approach from the southeast into the northwesterly wind, by and large, is over the FDA and the Percontee site until the helicopter gets close to the hospital itself.

With regard to traffic, Mr. Perrine stated that the hospital will be within an employment park that has a system of business/industrial roads, four lane roads, and Route 29 is a major highway, so there are no non-inherent effects related to traffic.

As to the environment, Mr. Perrine noted that, with any hospital, there would be clearing and grading required, but because of the natural grade of the site toward the lake, Petitioner will be able to minimize grading. The use of virtually all structured parking (*i.e.*, with very limited surface parking reserved for just the emergency drive up area), means there will be a great deal of green area relative to the facilities. Given the limited surface parking, there is no adverse impact related to the proposed facility.

Mr. Perrine opined that there are no inherent and no non-inherent adverse impacts, and the location is very appropriate for the hospital.

B. People's Counsel

Martin Klauber, the People's Counsel, participated in the hearing, but did not call any witnesses. He expressed his support for petition (Tr. 238-240):²³

²³ The Court Reporter mistakenly labeled Mr. Klauber's statement as coming from Mr. Kominers, one of Petitioner's attorneys.

. . . What I think you heard today is a plan that's going to fulfill all the needs and requirements . . . [and I] draw your attention to the community planning division's last page of the report where it goes over some of the objectives that have been fulfilled in a very succinct and eloquent way more than I can and I'm very pleased to say that the Office of People's Counsel recommends that this special exception be granted based on the conditions that were contained in the Planning Board's recommendations.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

As discussed in the following pages, based on the testimony and evidence of record, the Hearing Examiner concludes that the Petitioner will meet both the general requirements for special exceptions and the specific requirements spelled out in Zoning Ordinance §59-G-2.31 for hospitals, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not

necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff has identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with hospitals. Characteristics of the proposed uses that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed uses that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff adopted the following description of the inherent characteristics of a hospital use (Exhibit 102, p. 29):

A large, high-density, high-bulk physical plant, with some visual impact on its surroundings; hospital operations running round the clock, seven days per week; a large staff; a large number of patients and visitors; a significant amount of traffic and parking commensurate with the size of the staff and patient body; a certain amount of operational noise from *e.g.* air-conditioning systems; a large amount of bio and other waste which must be carefully disposed-of; a significant amount of external lighting needed for safety; and an emergency helipad.

While this description aptly enumerates the inherent characteristics of a hospital, the proposed site for a special exception use, including its location and its surroundings, is never inherent, and if there are non-inherent adverse impacts on the neighbors as a result of these site conditions, these effects may serve as the basis for denial of a special exception.

Fortunately for Petitioner, all the evidence in this case supports the conclusion that the subject site is an ideal location for the proposed hospital. Not only is it centrally located in Petitioner's service area, it is well screened and neither in, nor adjacent to, residential zones, thus minimizing adverse visual and operational impacts on residential neighborhoods. The campus is served by major roads, and will produce less traffic than the uses previously permitted for the site under approved preliminary plans. *See* Part II.D.2 of this report. It is large enough to permit ample on-site parking, while still allowing the convenient location of medical office buildings on the hospital campus. Petitioner's expert witnesses testified that there would be no non-inherent adverse effects from this use, and some felt there would be no adverse effects at all. Tr. 112-114; 137-139; 176; 196; 217; 233-234.

Technical Staff, noting the APF approvals and the location of the proposed hospital in an area developed with commercial and industrial uses, concluded, "The inherent and non-inherent adverse impacts associated with this application are not sufficient to warrant a denial of the special exception petition." Exhibit 102, p. 29. The Hearing Examiner would go farther than Technical Staff, and finds that there will be no non-inherent adverse effects, if the proposed use is properly conditioned, and thus no basis to deny this petition.

In this connection, a few words should be said about helicopter noise. As mentioned in footnote 12, on page 33 of this report, the existence of an emergency helipad on hospital grounds is a permitted use (Zoning Ordinance §59-A-6.6(a)), but its placement and operational characteristics may be non-inherent characteristics of the special exception site, and those factors may therefore be regulated by the Board of Appeals to minimize adverse impacts on the neighbors.

This conclusion is consistent with the position recently taken by the Board in CBA-2521-I, *Montgomery General Hospital* (effective January 18, 2008). In that case, the Board agreed with the

Hearing Examiner's analysis that it could regulate aspects of helipad placement and operations on hospital grounds in an effort to harmonize the two governing statutory schemes, one which makes emergency helipads a permitted use at hospitals (§59-A-6.6(a)) and the other which allows the Board to regulate special exceptions and impose conditions which will reduce adverse effects on the neighborhood from a special exception site (§§59-G-2.31, 1.21 and 1.22(a)).

That is not to say that the Board may prohibit the helipad or impose conditions that would render its operation ineffectual. Yet, the Board must have some power to regulate things occurring on the special exception site, even permitted activities. The fact that a use is permitted does not completely trump all other considerations, especially other considerations protected by other statutory provisions. In such cases, the Board must attempt to harmonize the two statutory schemes. *Maryland-National Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 183, 909 A.2d 694, 700 (2006).

Harmonizing in this context means that the Board may not prohibit the helipad or impose conditions that would render its operation unsafe or ineffectual, but within those parameters, it may regulate placement and operational characteristics to minimize adverse impacts on the neighbors. Some neighbors may have legitimate concerns about the potential for helicopter noise, but the evidence in this case is that the helipad is optimally located on the site and will be operated to minimize noise over residential neighborhoods. *See* discussion in Part II.C.2 of this report, pp. 29-34. As mentioned there, conditions will be recommended to minimize impacts upon the residential neighbors from helicopter operations.

Therefore, there are no non-inherent characteristics of the site which warrant denial of this petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Hospitals are permitted as special exception uses in the I-1 and I-3 Zones by virtue of Zoning Ordinance §59-C-5.21(e). The US 29/Cherry Hill Road Employment Overlay Zone allows all special exception uses allowed in the underlying zones, except as otherwise specified. Zoning Ordinance §59-C-18.132(a)(1)(A).

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: As described in Part IV. C., below, the proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.31.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the*

special exception must include specific findings as to master plan consistency.

Conclusion: The subject property lies within the area analyzed by the Fairland Master Plan, approved and adopted in 1997. As discussed in Part II. E. of this report, Community Based Planning Staff, in its review of the application, found the proposed development of the site with a Hospital to be “consistent with the vision and recommendation of the 1997 Approved and Adopted Fairland Master Plan.” Exhibit 159, p. 1. Staff concluded that “the proposed use is in conformance with the master plan and implements the vision of the master plan in a way that will solidify and enhance the importance of eastern county to the overall economy and well-being of Montgomery County.” Exhibit 159, p. 4. There is nothing in the record to contradict that assessment, and the Hearing Examiner agrees with the conclusion of Technical Staff that the application is in conformance with the Master Plan.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: On this issue, Technical Staff states (Exhibit 102, pp. 34-35), “With the recommended conditions, the proposed use will be in harmony with the general character of the neighborhood given its location within the U S 29/Cherry Hill Road Employment area that included the Montgomery Industrial Park and The West*Farm Technology Park.” Staff noted that properties adjacent to the site are developed with one, two and three story buildings, housing a variety of light industrial, office, retail, small restaurants and

other service uses. Staff agreed with the observation in Petitioner's Land Planning Report (Exhibit 101(rrr), pp. 8-9) that, although the Main Hospital Building will be taller than many surrounding buildings, it will be less than the maximum allowable height, and because it is located well within the boundaries of the business/industrial park, it will be "in harmony with the general character of the surrounding area." Staff found that the proposed structures would be compatible in terms of building and site design, density, scale and bulk. Staff also noted that the projected trip generation from the hospital will "represent a reduction [from previously approved preliminary plans for other uses on the site] of approximately 28 to 22 percent trips on surrounding roadways during the morning and evening peak hours, respectively." Petitioner's transportation planner, Wes Guckert, opined that the hospital will be compatible with the neighborhood because it will generate less peak-hour traffic than has already approved, and it will generally be off-peak to commuters. Tr. 173. Transportation Planning staff also found that the proposed pedestrian-bicyclist circulation and on-site parking will be adequate, provided conditions are met. In response to an inquiry from the Hearing Examiner, Technical Staff also found that the development will meet the requirements of the Growth Policy in effect when the application was filed (Exhibit 172).

Technical Staff concluded (Exhibit 102, p. 35):

The site and landscape plans provide for extensive landscaping, generous size of green space (73 %) and sufficient building setbacks. The setting of the hospital in the area, adequately distanced from the residential properties with the presence of stream, wetlands, 100-year floodplain, and steep slopes, effectuated an environmentally sensitive and aesthetically appealing design of the Hospital Campus. This, coupled with roads and circulation improvements recommended as part of the extensions of APF approvals, and the services that will be provided by the hospital would contribute greatly in maintaining and

enhancing the quality of life for the neighborhood and the surrounding communities.

Based on this record, the Hearing Examiner concludes that the proposed development will be in harmony with the neighborhood and that public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the requested uses would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, for the reasons stated in response to the previous general condition. In fact, there is no evidence to the contrary. Concerns raised by one community resident have been addressed elsewhere in this report (Part II.F). Other than that, community support has been overwhelming.

As pointed out by Technical Staff (Exhibit 101, pp. 35-36):

With the various innovative measures employed in the design of the campus and compliance with recommended conditions of approvals, the proposed Hospital Campus would be a positive and productive presence in the neighborhood and would provide a needed service for the residents of surrounding area and the County.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff observes (Exhibit 102, p. 36) that “Dust, loud noise and vibration from medivac [*sic*] helicopters are anticipated during landing and take-off procedures, in addition to loud noise including sirens, illumination and glare from emergency vehicle

lights, with related physical activity from emergency personnel at a hospital facility with emergency room and medivac [*sic*] services . . . [; however, these effects] are inherent to a hospital use during emergency episodes.” Moreover, the adjacent land uses are all commercial and industrial, thereby mitigating the impacts of these disturbances. Except with regard to helicopter and ambulance noise, there is no indication that the use will cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity. The Hearing Examiner finds that the helicopter and ambulance operations are inherent activities in this case and that, as conditioned, the requested use will not violate this section of the Zoning Ordinance.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff identified the following approved special exception uses (zoned I-1, I-2, I-3 and C-6) within the area the identified as the US-29/ Cherry Hill Road Employment Area in the Master Plan (Exhibit 102, pp. 36-37):

- BAS-1274: A hotel (courtyard Marriot)
- BAS-2316: Drive in restaurant (McDonalds), within the Orchard Center compound.
- BAS-2321: A gas station, within the Orchard Center compound.
- BAS-2563: Eating and drinking establishment (Starbucks), within the Orchard Center compound
- BAS-2656: Proposed Hilton Garden Hill Hotel

The Hearing Examiner finds that the proposed use will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. The hospital site is not in, or adjacent to, a residential area. Moreover, as stated above, this special exception use is consistent with the recommendations of the

applicable Master Plan, and therefore, under the terms of this provision, it does “not alter the nature of an area.”

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed uses would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The establishment of a hospital at this location will provide employment and health service to the community, and will have no adverse effect on any of the listed individuals.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Applying this provision to the facts of this case is a bit complicated, and it is discussed at great length in Part II. D. of this report. Based on that discussion and the record in this case, the Hearing Examiner finds that the proposed use will be served by adequate public facilities.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The parcels which comprise the Hospital were part of a subdivision for office use previously approved by the Planning Board, including a review and a finding of adequacy under the Adequate Public Facilities Ordinance.²⁴ These APF findings have been extended by the Planning Board until July 25, 2013 (Exhibit 162(a)). As a result, the proposed use does not require a preliminary plan of subdivision, and the Board of Appeals must therefore determine the adequacy of public facilities for the special exception. The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities. Public water and sewer serve the site and are adequate, as are storm drainage facilities. The property is located within two miles of the Hillandale Fire Station located at 10617 New Hampshire Avenue, and the property is served by the 3rd District of the Police Department located at 801 Sligo Avenue in Silver Spring. Exhibit 101(rrr), p. 10. By its nature, the use will require no school services.

A traffic impact study (Exhibit 152, as amended by Exhibit 161(d)), was prepared by Petitioner's transportation planning expert, Wes Guckert, and reviewed by Transportation Planning Staff, which concluded that the proposed use would create considerably less peak-hour traffic than uses previously approved for the site. Based on Staff's recommendation, the Planning Board extended the existing APF approvals for this site. Exhibit 162(a). For the reasons discussed at length in Parts II. D of this report, the Hearing Examiner finds that the subject use will comply with the applicable Growth Policy standards.

²⁴ Preliminary Plan No. 19820680 for Parcels BB and CC; Preliminary Plan No. 119910390 for Parcels RR and SS; and Preliminary Plan No. 119910380 for Parcel MMM.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on this uncontradicted record, as discussed in Part II. D of this report, the Hearing Examiner finds that the proposed use would have no adverse impact on transportation facilities or safety.

C. Specific Standards: Hospitals

The specific standards for hospitals are found in Zoning Ordinance § 59-G-2.31. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.31. Hospitals

A hospital or sanitarium building may be allowed, upon a finding by the board that such use will not constitute a nuisance because of traffic, noise or number of patients or persons being cared for;

Conclusion: For the reasons set forth above, in response to the "General Conditions" for a special exception (§59-G-1.21), the proposed hospital "*will not constitute a nuisance because of traffic, noise or number of patients or persons being cared for.*" As stated in Petitioner's revised Land Planning Report (Exhibit 101(rrr), p. 4,

The parcels which comprise the Hospital were part of a subdivision for office use previously approved by the Planning Board, including review and a finding of adequacy under the Adequate Public Facilities Ordinance. Based on trip generation comparisons, the size of the Hospital is such that it will not generate peak hour traffic volumes in excess of the previously approved office amounts. The nature of a hospital operation is such that traffic is generated over a broader time period with less compression of traffic during the morning and afternoon peak hour time periods, which is a characteristic of conventional office buildings. In addition, the Hospital will be located within a business park, which includes streets with paving and right of way widths sufficient to accommodate the anticipated traffic. Therefore, the Hospital will not constitute a nuisance due to traffic.

On April 24, 2008, the Planning Board extending its finding of APF validity for the site until July 25, 2013. Exhibit 162(a). There is no contradictory evidence in the record, and the Hearing Examiner finds that the Planning Board's determination of adequate public facilities establishes that traffic created by the hospital will not constitute a nuisance.

Although there will be helicopter and ambulance noise, as previously discussed in this report, there is no evidence that such noise will exceed that which is inherent in the operation of any modern hospital. Moreover, the hospital is not in, nor adjacent to, a residential zone, and it will be well screened and will have adequate on-site parking. The campus is also large enough to handle the planned patient load. For these reasons, the Hearing Examiner finds that the proposed use will not constitute a nuisance because of noise or the number of patients or persons being cared for.

that such use will not affect adversely the present character or future development of the surrounding residential community;

Conclusion: As noted above, there is no residential community immediately "surrounding" the hospital campus. The closest residential communities, which are about a thousand feet away, overwhelmingly support the establishment of a hospital on the subject site. The best evidence that the planned hospital will not be detrimental to development of the surrounding residential community is the fact that its location is consistent with the applicable Master Plan. The hospital will be on a large campus, which will insulate it from the residential community, and it will promote development by providing employment and needed hospital services.

and if the lot, parcel or tract of land on which the buildings to be used by such institution are located conforms to the following minimum requirements; except, that in the C-2 and C-O zones, the minimum area and frontage requirements shall not apply:

(1) Minimum area. Total area, 5 acres.

Conclusion: The site of the special exception consists of 48.86 acres, thus exceeding the minimum area requirements.

(2) Minimum frontage. Frontage, 200 feet.

Conclusion: The proposal complies with this requirement. The property has over 1,700 feet of frontage along Plum Orchid Drive.

(3) Setback. No portion of a building shall be nearer to the lot line than a distance equal to the height of that portion of the building, where the adjoining or nearest adjacent land is zoned single-family detached residential or is used solely for single-family detached residences, and in all other cases not less than 50 feet from a lot line.

Conclusion: The property does not adjoin any land that is zoned for single-family detached residential use or used solely for single-family detached residences. According to Technical Staff (Exhibit 102, p. 31), the site plan shows that the buildings in the proposed Hospital Campus are set back at least 50 feet from each lot line, and the proposal thus satisfies this requirement. The Hearing Examiner so finds.

(4) Off-street parking. Off-street parking shall be located so as to achieve a maximum of coordination between the proposed development and the surrounding uses and a maximum of safety, convenience and amenity for the residents of neighboring areas. Parking shall be limited to a minimum in the front yard. Subject to prior board approval, a hospital may charge a reasonable fee for the use of off-street parking. Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.

Conclusion: Petitioner has met all the recommendations of Technical Staff relating to parking. As discussed in Part II. C. 4 of this report, parking provided will exceed the parking

requirements in all categories, except for the walking distance for staff from the Main Hospital Building to the North Garage, and a parking waiver has been requested in that regard. The parking will be located in garages, with a small amount of surface parking near the emergency department. Parking will be conveniently located for patients and visitors, and great attention has been paid to ease “way-finding” for these hospital users. Tr. 105. The evidence thus establishes that parking has been designed to maximize safety, convenience and amenities for the users. The location of the site and its screening will insulate it from residents of neighboring areas. Petitioner intends to impose reasonable charges for parking, similar to that charged by other hospitals. Tr. 66. The final part of this requirement is that *“Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.”* This goal has been a major theme of the hospital’s design, which incorporates extensive landscaping and the “Planetree” philosophy (Exhibit 101(ppp), pp. 3-5) to achieve maximum healing benefit from the natural setting, as explained in Part II.C.1. of this report.

(5) Commission recommendation. The board or the applicant shall request a recommendation from the commission with respect to a site plan, submitted by the applicant, achieving and conforming to the objectives and requirements of this subsection for off-street parking and green area.

Conclusion: The site plan has been reviewed by Technical Staff, and modified in accordance with their suggestions as to both parking and protection of environmentally sensitive areas. The revised plans were thereafter approved by the Planning Board. In addition, due to the location of the portion of the property within the I-3 Zone, the proposed development will be subjected to a site plan review by the Planning Board.

(6) *Building height limit. Building height limit, 145 feet.*

Conclusion: The tallest building planned for the site will be the Main Hospital Building, which will have seven stories above ground and will not exceed the 145 feet maximum height. Revised Site Plan (Exhibit 161(e)).

(7) *Prerequisite. A resolution by the health services planning board approving the establishment of the hospital shall be filed with the petition for a special exception.*

Conclusion: Petitioner initially argued that this requirement “is applicable only to the establishment of a new hospital, whereas this special exception application is for the replacement of an already established hospital.” Petitioner added that “The applicant will comply with all applicable health planning requirements.” Exhibit 101(rrr), p. 6. The Hearing Examiner found this conclusory statement to be an inadequate response to the statutory requirement and therefore asked Petitioner to supplement the record (Exhibit 171) and respond to questions about the statutory provision. Petitioner did so in a thoroughly documented letter (Exhibit 175) responding to the Hearing Examiner’s questions.²⁵

²⁵ The portion of that letter directly addressing the Hearing Examiner’s questions is set forth below:

Question 1: Does Zoning Ordinance §59-G-2.31(7), which requires “[a] resolution by the health services planning board approving the establishment of the hospital” to be filed with the special exception petition, refer to the Certificate of Need process or some other process or finding?

Answer: Zoning Ordinance §59-G-2.31(7) does not refer to the Certificate of Need process conducted by the State. . . . the Certificate of Need process is addressed at the state, rather than at the local, level. In addition, the 1985 repeal of Chapter 24, “Health and Sanitation,” Article III, “Health Systems Agency” also repealed the existence of the HSPB, which Chapter 24, Article III, had previously established. Therefore, (a) §59-G-2.31(7) refers to a now defunct County agency, and (b) this agency never had any authority over the relocation of hospitals in Montgomery County. The current zoning ordinance section at issue is a nullity.

Question 2: If Zoning Ordinance §59-G-2.31(7) is referring to the Certificate of Need process, does a Petitioner for any new special exception (as distinguished from a modification petition) for a hospital have to have the Certificate of Need before a special exception may issue?

Answer: Zoning Ordinance §59-G-2.31(7) does not refer to the Certificate of Need process. . . .

Based on Petitioner's letter (Exhibit 175) and the attachments thereto, the Hearing Examiner concludes that Zoning Ordinance §59-G-2.31(7) is a nullity because it references a County agency (the Health Services Planning Board) which no longer exists and whose function in regard to "approving the establishment of the hospital" has not been inherited by any other existing County agency. The closest analog to the now defunct Health Services Planning Board is the Montgomery County Commission on Health (MCCH), established in Montgomery County Code §24-23. Its functions are enumerated in Code §24-24, and they are all advisory in nature. One provision, §24-24(a)(6), does authorize MCCH to "Comment on the appropriateness of institutional health services proposed to be offered in the County . . .," but that is allowed only as part of its function "[t]o advise the County Executive and the County Council." §24-24(a). It would be a stretch to conclude that the authority granted in §24-24(a)(6) is the equivalent of Zoning Ordinance §59-G-2.31(7), which calls for a resolution approving the establishment of a hospital. Given that distinction, it appears that Zoning Ordinance §59-G-2.31(7) is a vestige of the past. Petitioner will, of course, still have to go through a Certificate of Need process at the state level, before

Question 3: If a new resolution is not required by Zoning Ordinance §59-G-2.31(7), why isn't a copy of the original health services planning board resolution (and any renewals) for the existing hospital required to be filed with the special exception petition pursuant to Zoning Ordinance §59-G-2.31(7)?

Answer: Founded in 1906, the creation of Washington Adventist Hospital predates the establishment of the HSPB in approximately 1974. Also, the HSPB no longer exists or retains any authority over health care planning matters, including the relocation of existing hospitals. This explains why a copy of a HSPB resolution, or any renewals of such a resolution for the existing Washington Adventist Hospital, is not required to be filed with the special exception pursuant to §59-G-2.31(7). . . .

Question 4: How does the fact that this is a hospital relocation make Zoning Ordinance §59-G-2.31(7) inapplicable?

Answer: As discussed in our response to Question 1, §59-G-2.31(7) refers to a now defunct health planning body, which never had any authority over hospital relocations.

the Maryland Health Care Commission. Maryland Code, Health-General Article, §19-311 and COMAR §§10.07.01.04 and 10.24.01.02. That state Commission receives input from the County's Department of Health and Human Services during the Certificate of Need process.

The "bottom line" here is that Petitioner cannot be required to follow the requirements of Zoning Ordinance §59-G-2.31(7) because it is no longer possible to do so.

D. General Development Standards §59-G-1.23

- (a) Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: In addition to the other general and specific standards set forth above, "*Special exceptions are subject [under Code § 59-G-1.23(a)] to the development standards of the applicable zone where the special exception is located [in this case, I-3, in which Zone all the hospital buildings will be located] except when the standard is specified in Section G-1.23 or in Section G-2.*" In this case §59-G-2.31(6), which is the hospital special exception, specifies building height limits to 145 feet, so that replaces the general standard for the I-3 Zone.

The table set out on the following page was provided by Technical Staff, and it demonstrates compliance with applicable development standards for the I-3 Zone and the US 29/Cherry Hill Road Employment Overlay Zone²⁶ (Ex. 102, pp. 23-24):

²⁶ The I-1 Zone standards are not applied because there will be no structures in the small portion of the site located in the I-1 Zone. The Hearing Examiner included the 100 foot height standard for the I-3 Zone in this chart, but as discussed above, that is superseded by the 145 foot height standard contained in the special exception itself.

Development Standard	Required (current)				Proposed
	I-1	I-3	Overlay	Hospitals Sec. 59-G- 2.31	
Net lot area				5 acres	48.86 acres
Maximum Building Height		100 ft		145 ft	145 ft
Coverage Limitations (Percent of gross tract area): <ul style="list-style-type: none"> Minimum Green area Maximum off-street Parking 			35% 45%		72.91% 4.52%
Maximum density of development*		0.50			.46
Minimum Building Setback <ul style="list-style-type: none"> From abutting non residential zoning From another building on the same lot 			30 ft	50 ft	50 ft 30ft
Minimum Parking, Loading and Maneuvering area setbacks <ul style="list-style-type: none"> From abutting commercial or industrial zoning other than I-3 or R&D zones From an abutting lot classified in the I-3 or R & D zones From an arterial road that separate the zone from a commercial or industrial zone 			25 ft 20 ft 35 ft		25 ft 20 ft 35 ft
Minimum frontage				200 ft	1704.66 ft

*In the I-3 zone, the maximum density may be increased up to a maximum floor area ratio of 0.60 provided that the applicant for development obtains approval of a traffic mitigation agreement at the time of site plan review, that will result in traffic generation equal to or less than a project with a floor area ratio of 0.50.

(b) Parking requirements. *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: Parking requirements and Petitioner's compliance therewith are discussed in Part II. C. 4 of this report. As shown therein, parking provided will exceed the parking requirements in all categories, except for the walking distance for staff from the Main Hospital Building to the North Parking Garage, and a parking waiver has been requested in that regard. The Hearing Examiner recommends approval of that waiver request for the reasons set forth at length in Part II. C. 4, above.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

Conclusion: Not applicable.

- (d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: Environmental issues are discussed at length in Part II.C.6 of this report. The Planning Board approved Petitioner's Preliminary Forest Conservation Plan (PFCP) for the site (Exhibits 101(h) through (n)), with conditions, on April 24, 2008. Exhibit 169. The PFCP was updated and clarified in post-hearing filings (Exhibits 161(f) through (j)). Compliance with its terms and those of the Final Forest Conservation Plan is a recommended condition in Part V of this report.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Water quality plans apply to special protection areas, and the subject site is not in a special protection area. Nevertheless, Petitioner's stormwater management concept plan (Exhibits 101(p) – (y)) has been approved by DPS (Exhibit 154).

(f) Signs. *The display of a sign must comply with Article 59-F.*

Conclusion: New signage is discussed in Part II.C. 5 of this report. The Hearing Examiner recommends the following condition:

All signs placed on the property must meet the requirements of Zoning Ordinance Article 59-F in terms of number, location, size and illumination, or appropriate variances obtained therefor. Sign permits must be obtained, and copies of those permits should be filed with the Board of Appeals prior to posting.

(g) Building compatibility in residential zones.

Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: Inapplicable since the special exception site is not in a residential zone.

(h) Lighting in residential zones

All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: As mentioned, the subject site is neither in, nor adjacent to, a residential zone.

Nevertheless, Petitioner's photometric study (Exhibits 101(mm) and (nn))

demonstrates Petitioner's compliance with this requirement, as discussed in Part II. C.

5. of this report.

59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: Inapplicable since the special exception site is not in a residential zone.

In sum, it is clear from the record that the proposed use meets the standards for both the hospital special exception and the requested parking waiver.

V. RECOMMENDATION

Based on the foregoing analysis and a thorough review of the entire record, I recommend that Petition No. S-2721, to permit the construction and operation of Washington Adventist Hospital on a new site, at West Farm Technology Park, 12030-12110 Plum Orchard Drive in Silver Spring., MD, be GRANTED, and that a waiver of the requirements of Zoning Ordinance §59-E-1.3(a), which limits the distance of a parking facility from the establishment served to 500 feet, be GRANTED, all with the following conditions:

1. Petitioner must comply with the conditions of the Preliminary Forest Conservation Plan (PFCP) and any Final Forest Conservation Plan approved by the Planning Board. The PFCP conditions include:
 - a. Revise the PFCP to include the following:
 - i. Avoid disturbance of environmental buffers, including wetlands. Revisions must be consistent with the two revised site plans (entitled “North Parking Garage and MOB2 Plan Revision” and “Main Hospital Entry Site Plan Revision”) and alternate waterline plan (entitled “Alternate Waterline Location Plan”).
 - ii. Show proposed limits of disturbance that avoid environmental buffers and that are realistically located with respect to proposed structures.

- b. Category I conservation easement must be placed over forest retention areas, forest planting areas, and that portion of the environmental buffer that does not include a County stormwater management easement.
 - c. Category I conservation easement must be shown on record plats.
- 2. Petitioner must comply with Montgomery County green building requirements.²⁷
- 3. Revise all plans for the special exception to avoid or minimize disturbance of environmental buffers, including wetlands. Revisions should be consistent with the two revised site plans and waterline alignment plan (entitled “North Parking Garage and MOB2 Plan Revision” and “Main Hospital Entry Site Plan Revision” and the “Alternate Waterline Alignment” plan received March 27, 2008).
- 4. Coordinate with MNCPPC and County DPS to implement measures to maintain water flow to the forested wetland and its buffer near the northern parking garage. Cleaner water discharges from rooftops, green roofs, etc., should be examined to replace surface and groundwater flows lost to upstream development.
- 5. To ensure adequacy of public facilities, Petitioner must satisfy the following conditions:²⁸
 - a. Limit development on the property as part of this special exception and future Site Plan for the property to a total built density of 803,570 square-feet, including a main hospital building, an ambulatory care building, a faith center, two medical office buildings, two parking structures, and a helipad. No additional uses may be permitted on the property unless the special exception is modified within the APF validity period.
 - b. Implement road improvements and other installations required in Conditions c, g, h, i, j and k as described in the schedule below. The Applicant must complete and submit to Montgomery County Department of Transportation (DOT) conceptual designs for the road improvements and other installations, including signal warrant studies, at least 45 days in advance of the Planning Board’s public hearing on the Applicant’s Site Plan. Where possible, the Applicant may meet the provision of required turn lanes in some cases by restriping existing paving. Final design drawings for the road improvements and other installations must be submitted to all relevant permitting agencies prior to the release of building permits for the hospital. At the time of submission of completed designs to permitting agencies, the Applicant must post one or more surety or cash bonds in the amount estimated by its engineers (and approved by the Planning Board staff) that represent the cost of construction of such road improvements and other installations. Bonds must be posted with DOT or if DOT does not accept them, with the Planning

²⁷ This conditions differs from Condition #2 proposed by the Planning Board because that condition called for Petitioner to revise its special exception site plan relating to parking, and Petitioner has already done so in filing its amended Composite Special Exception Site Plan (Exhibit 161(e)).

²⁸ The conditions listed are those recommended jointly by Technical Staff and DOT (Exhibit 176) following the hearing. They preserve the intent of the Planning Board recommendations, but have been updated to include modifications sought by DOT after the hearing.

Board on an interim basis to be released to the Applicant at such time as the permitting agencies accept bonds for equivalent purposes. Upon issuance of permits, the Applicant must proceed diligently with construction of the road improvements and other installation.

The Applicant must provide notice to Planning Board staff that final inspections for the use and occupancy permit have begun. Prior to the issuance of any use and occupancy permit for the hospital and/or any other on-site building, all road improvements and other installations must be substantially complete and open to traffic as determined by Planning Board staff.

- c. Prior to issuance of the building construction permit (including structural, electrical, plumbing, mechanical, etc. components) for the hospital and/or any other on-site building, the Applicant will be required to have obtained any necessary rights-of-way and/or easements, along with Executive Branch plans approval, and posted bonds for the construction drawings of improvements (including but not limited to intersection widenings, DOT-approved traffic signals, traffic control signs and markings, etc.) to be constructed within the public right-of-way.

Additionally, if any of the road improvements identified in these conditions either are now, or in the future become, obligations of other development projects, applicants of other development projects may participate on a pro-rata basis in the joint funding of such improvements. Basis of participation on a pro-rata basis is the sum of total peak hour trips generated by the subject development relevant to the particular improvement over the sum of total peak hour trips generated by all developments required by the Planning Board to participate in the construction of the particular improvement. The road improvements must include:

- i) At the Cherry Hill Road/Broad Birch Drive/Calverton Boulevard intersection:
 - o Provide, along Cherry Hill Road, a southbound right-turn lane to westbound Broad Birch Drive.
 - o Provide, along Cherry Hill Road, a second northbound left-turn lane to westbound Broad Birch Drive.
 - o Provide, along Broad Birch Drive, improvements that result in two eastbound left turn lanes to northbound Cherry Hill Road, a through lane to eastbound Calverton Boulevard, and a right-turn lane to southbound Cherry Hill Road.
 - o Upgrade the existing traffic signal system at the intersection as necessary.
- ii) At the Cherry Hill Road/Plum Orchard Drive/Clover Patch Drive intersection:
 - o Provide, along Cherry Hill Road, a southbound right-turn lane to westbound Plum Orchard Drive.
 - o Provide, along Cherry Hill Road, a second northbound left-turn lane to westbound Plum Orchard Drive.
 - o Upgrade the existing traffic signal system at the intersection as necessary.

iii) At the Broad Birch Drive/Plum Orchard Drive intersection:

- Provide a new traffic signal when warranted and approved by DOT.
- Provide, along Broad Birch Drive, a separate eastbound right-turn lane to southbound Plum Orchard Drive.
- Provide, along Broad Birch Drive, a separate westbound left-turn lane to southbound Plum Orchard Drive.

iv) At the Tech Road/Broad Birch Drive intersection:

- Provide a new traffic signal when warranted and approved by DOT.
- Reconfigure southbound Tech Road approach to Broad Birch Drive – from a through lane and a through-left lane to provide a through-left lane (to southbound Tech Road and eastbound Broad Birch Drive) and a left-turn lane (to eastbound Broad Birch Drive).
- Reconfigure northbound Tech Road approach to Broad Birch Drive – from a through-right lane and a through lane to provide a right-turn lane (to eastbound Broad Birch Drive) and a through lane (to northbound Tech Road).
- Reconfigure westbound Broad Birch Drive approach to Tech Road – from a right-turn lane and a left-turn lane to provide a right-turn lane (to northbound Tech Road) and a left-right lane (to southbound Tech Road and northbound Tech Road).

v) At the Plum Orchard Drive/proposed Southern (Main) Hospital Entrance Driveway/Private Street A:

- Provide a new traffic signal when warranted and approved by DOT.
- Provide, along Plum Orchard Drive, a separate northbound left-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
- Provide along Plum Orchard Drive, a separate southbound right-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
- Provide, along the proposed hospital driveway, separate outbound right-turn and left-turn lanes (to southbound and northbound Plum Orchard Drive respectively).

vi) At the Plum Orchard Drive/Proposed Northern Hospital Entrance Driveway:

- Provide, along Plum Orchard Drive, a separate northbound left-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
- Provide, along Plum Orchard Drive, a separate southbound right-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
- Provide, along the proposed hospital driveway, separate outbound right-turn and left-turn lanes (to southbound and northbound Plum Orchard Drive respectively).

The aforementioned lane use modifications are subject to DOT approval. If DOT finds the modification(s) is not appropriate when the applicant applies for the first building construction permit, the Applicant shall prepare a cost estimate for the measures necessary to implement the modification(s), for approval by DOT.

Applicant shall pay DOT the approved amount(s); DOT will be responsible for implementing the modification(s) at such time as it determines them to be operationally appropriate.

Prior to approval of the roadway construction drawings, Applicant shall provide documentation acceptable to the Executive Branch review agencies that satisfactorily demonstrates the proposed intersection improvements will be adequate to accommodate the turning movements of WB-50 trucks and emergency response vehicles. The aforementioned intersection improvements may be expanded to accommodate these turning movement requirements.

If required as a result of Executive Branch approval of the roadway construction (and/or related Signs and Markings Plan), Applicant shall restripe Plum Orchard Road. Applicant shall also construct pedestrian refuge islands if approved under that review.

Applicant will be required to relocate any existing underground utilities, at its sole expense, if the those utilities will be located within the proposed widened roadway pavement or in conflict with the relocated enclosed storm drain system.

- d. Provide hospital-oriented employee shuttle(s) for main shift employees to and from the Metrorail system for a total of 10 years from the date the hospital opens to the public or until an earlier date if the Planning Board determines that area public transit service adequately meets the needs of these employees. The details of the shuttle operation (routes, locations, headways, etc.) must be determined at the time of Site Plan. Logistics related to the operation of the employee shuttle(s) must be in place prior to release of the first occupancy permit for the hospital and/or any other on-site building. The employee shuttle service must start operation at least a week prior to formal opening of the proposed hospital.
- e. The applicant shall submit a Memorandum of Understanding (MOU) to implement a Transportation Management Program (TMP) for the proposed hospital at the time of Site Plan. The applicant, the Maryland-National Capital Park and Planning Commission and the Department of Transportation shall each be signatory parties on the MOU for the TMP for this project. The MOU and the TMP must be finalized and entered into prior to the release of building permits for the proposed hospital and/or any other on-site building.

The TMP must designate a Transportation Coordinator at the hospital. The TMP must also include a periodic reporting mechanism such as a semi-annual performance review of the program by DOT or the Planning Board staff, as well as periodic reports to a Community Liaison Committee that may include members of the local community, area businesses and institutions, and Citizen Advisory Committees. In addition, the program must consider transit subsidies to employees, establishment of creative transportation accessibility options for employees, patients and visitors, installation of transportation/transit information display areas or kiosks in prominent locations

throughout the hospital for employees, patients and visitors, and joint operation of local non-employee circulator shuttles in the area with other businesses/uses.

- f. Provide adequate internal connecting roadways, sidewalks, handicapped ramps and crosswalks to ensure safe and efficient vehicular/pedestrian connections. The applicant must submit a vehicular/non-vehicular circulation plan for the campus at the time of Site Plan for review by Transportation Planning staff, DOT, and the Montgomery County Department of Permitting Services (DPS).
- g. Construct a multi-bus pulloff facility(s) with canopy structure(s) in the vicinity of the hospital site. This is in lieu of the Planning Board's recommendations set forth in Section 5(g-j) of the Planning Board Recommendations for various bus shelters in the vicinity of the hospital. The location and conceptual design details for the facility(s) shall be resolved at the Site Plan stage. To the extent the multi-bus pulloff facility(s) is not equivalent to the Planning Board's recommendations, the Applicant will provide additional bus shelters or other equivalent amenity. These equivalency issues will be resolved at the time of Site Plan.
- h. Provide, with approval from DOT, pedestrian countdown/APS signals at the Cherry Hill Road intersections with Broad Birch Drive/Calverton Boulevard and Plum Orchard Drive/Clover Patch Drive. The pedestrian countdown/APS signals must be installed at these intersections under permit in conjunction with the aforementioned intersection improvements. In the event the pedestrian countdown/APS signals are not approved by DOT, the applicant may substitute these with other available non-auto facilities of equivalent or greater mitigation value.
- i. Provide, with approval from DOT, pedestrian countdown/APS signals at the Plum Orchard Drive intersection with the proposed Southern Hospital Entrance Driveway/Private Street A (main hospital entrance) if the proposed traffic signal at this intersection is approved by DOT. The pedestrian countdown/APS signals must be installed at this intersection under permit in conjunction with the aforementioned intersection improvements. In the event the pedestrian countdown/APS signals are not approved by DOT, the applicant may substitute these with other available non-auto facilities of equivalent or greater mitigation value.
- j. Relocate any existing pedestrian countdown and accessible pedestrian signals, at Applicant's sole expense, as part of any widenings of existing signalized intersections. In the event the County has already installed pedestrian countdown and accessible pedestrian signals at intersection(s) required of the Applicant, the Applicant obtain necessary plan approvals and posted bonds to install such signals at other nearby signalized intersection(s) prior to issuance of the building construction permit (including structural, electrical, plumbing, mechanical, etc. components) for the hospital and/or any other on-site building.
- k. Prior to issuance of the building permit for the hospital and/or any other on-site building, Applicant shall pay the County \$40,000 for the future installation of two real-time transit

information signs to be installed in the vicinity of the site. Applicant will be responsible for installing the necessary equipment, conduit, electrical connections, etc. to allow the County to install one real-time transit information sign each in the hospital and in the canopy structure once that program becomes operational. Applicant to grant necessary permission to allow County staff to access and maintain the real-time transit information sign, if one is installed within the hospital as proposed.

1. Provide bike lockers and bike racks on the hospital campus as required by the Montgomery County Code. The bike locker and bike rack locations must be determined and finalized at the time of Site Plan.
6. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
7. Petitioner may employ approximately 2,000 employees to serve staffing requirements for approximately 1,300 full-time equivalent employees. Approximately 500 additional employees will work in the two medical office buildings (“MOBs”) on the Campus.
8. Petitioner’s hours of operation are 24 hours per day, seven days a week. Working hours for staff will be arranged in eight to ten different shifts, which should be coordinated in the Transportation Management Plan to minimize traffic impacts, consistent with hospital needs.
9. The hospital campus must be developed in accordance with the final site, landscape, architectural, engineering and lighting plans submitted prior to closure of the record, unless changed at site plan review. This special exception is conditioned upon approval at site plan review. If the submitted plans and/or specifications for this project change at site plan review in any material way, Petitioner must timely apply to the Board of Appeals for an administrative modification of the special exception to substitute the revised plans and specifications.
10. All signs placed on the property must meet the requirements of Zoning Ordinance Article 59-F in terms of number, location, size and illumination, or appropriate variances obtained therefor. Sign permits must be obtained, and copies of those permits should be filed with the Board of Appeals prior to posting.
11. Petitioner should maintain a log of helicopter flights to and from the hospital to insure that it is being used only for emergency purposes, which is the basis for its permitted use status under Zoning Ordinance §59-A-6.6. “Emergency” in this context should be broadly construed to include all flights deemed medically necessary for individual patients. The log should indicate at least the date and time of flight, the destination and origination points, the operator of the helicopter, and the reason for the flight (Patient names or identification numbers, if included, should be handled so as to protect patient privacy rights). The log should be made available for review by the Department of Permitting Services upon request.
12. Petitioner should review the helicopter flight paths and determine which flight paths will minimize disturbance to the surrounding community. To the extent that the hospital has control over the flight paths used, it should establish a preference, consistent with safety and operational concerns, for using the flight paths which minimize disturbance to the surrounding

- community. If Petitioner does not control the flight paths, then it should consult with the appropriate controlling authority to encourage use of the flight paths which minimize disturbance to the surrounding community, without adversely impacting safety and operational considerations. The results of Petitioner's review should be submitted to the Board within six months after the relocated helipad becomes operational.
13. The requirement of Zoning Ordinance §59-E-1.3(a) that a parking facility be located within a 500-foot walking distance of the establishment served is waived so that the North Parking Garage may be located at a walking distance of up to 560 feet from the Main Building of the Hospital. Use of the North Parking Garage to access the Main Hospital Building should be restricted to hospital staff, in light of this waiver. This restriction does not apply to users of Medical Office Building 2 (MOB2), which is located practically adjacent to the North Parking Garage.
 14. Petitioner must create a Community Liaison Committee (CLC) to discuss and address issues of concern to Petitioner and/or the community, especially those within sight and sound of the new property. The CLC may be established under the auspices of the Fairland Master Plan Citizens Advisory Committee, if that Group is amenable, or it may exist as an independent entity. The CLC shall consist of Petitioner's representative and representatives from the Fairland Master Plan Citizens Advisory Committee, the Calverton Citizens Association, Riderwood Village, West Farm Homeowners Association, Greater Colesville Citizens Association, Tamarac Triangle Citizens Association, Paint Branch/Powder Mill Estates Citizens Association, and any other nearby civic association or homeowners association wishing to participate. The People's Counsel will serve as an *ex officio* member of the CLC. The CLC is intended to provide a means and mechanism for communication and interaction between the hospital and its neighbors. The CLC must have an initial organizational meeting prior to the start of construction, and meet three times a year until construction is completed. Once the hospital is open to the public, the CLC must thereafter meet at least two times each year. Minutes of meetings must be taken and distributed, and the CLC must prepare an annual report to be submitted to the Board of Appeals. There will be no requirements for a quorum, voting, or specific attendance. Community groups must be invited and notified, but they may attend at their own election and based upon their own degree of interest.
 15. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: August 19, 2008

Respectfully submitted,

Martin L. Grossman
Hearing Examiner